MONTANA LEGISLATIVE HISTORY

Chapter 344 19 95

Bill H _____ S 264 Original bill & history ✓ C

H. Committee on Business & Labor			S. Committee on Labor & Employment Relations		
Hearing Date(s)	Mar 09	✓ C	Hearing Date(s)	Feb 09	✓ C
	Mar 14	✓ C		Feb 09	✓ C
		C			C
		C			C
Date Out	Mar 15	✓ C		Feb 09	✓ C

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

SB 261 INTRODUCED BY SPRAGUE

PROHIBIT DISPENSING OF FLAMMABLE LIQUIDS SOLD AT RETAIL BY ANY PERSON OTHER THAN AN OWNER, OPERATOR, OR EMPLOYEE OF AN ENTERPRISE SELLING FLAMMABLE LIQUIDS AT RETAIL

1/27	INTRODUCED		
1/27	FIRST READING		
1/27	REFERRED TO BUSINESS & INDUSTRY		
1/28	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/09	HEARING		
2/09	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY DIED IN COMMITTEE		

SB 262 INTRODUCED BY SPRAGUE

PROHIBIT A LOCAL GOVERNMENT FROM REQUIRING A SUBDIVISION TO CONFORM TO A MASTER PLAN

1/27	INTRODUCED		
1/27	FIRST READING		
1/27	REFERRED TO LOCAL GOVERNMENT		
2/09	HEARING		
2/15	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY DIED IN COMMITTEE		

SB 263 INTRODUCED BY MOHL, ET AL.

REQUIRE COUNTY OFFICIALS TO OPERATE WITHIN TOTAL APPROPRIATION ADOPTED AS FINAL BUDGET FOR EACH DEPARTMENT WITHIN A FUND

1/27	INTRODUCED		
1/27	FIRST READING		
1/27	REFERRED TO LOCAL GOVERNMENT		
2/09	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	50	0
2/18	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO LOCAL GOVERNMENT		
3/09	HEARING		
3/24	TABLED IN COMMITTEE DIED IN COMMITTEE		

SB 264 INTRODUCED BY GAGE, ET AL.

ESTABLISH THE MONTANA PROFESSIONAL EMPLOYER ORGANIZATIONS LICENSING ACT

1/27	INTRODUCED		
1/27	FIRST READING		
1/27	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/28	FISCAL NOTE REQUESTED		
2/03	FISCAL NOTE RECEIVED		
2/03	FISCAL NOTE PRINTED		
2/07	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED AS AMENDED	50	0
2/14	3RD READING PASSED	50	0

	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/09	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/24	2ND READING CONCURRED	73	25
3/25	3RD READING CONCURRED	72	26
	RETURNED TO SENATE WITH AMENDMENTS		
3/30	2ND READING AMENDMENTS CONCURRED	50	0
3/31	3RD READING AMENDMENTS CONCURRED	48	0
4/04	SIGNED BY PRESIDENT		
4/05	SIGNED BY SPEAKER		
4/06	TRANSMITTED TO GOVERNOR		
4/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 344		
	EFFECTIVE DATE: 07/01/95		

SB 265 INTRODUCED BY BECK, ET AL.

ESTABLISH AN EXPENDABLE TRUST TO BE USED FOR PROVIDING LIBRARY SERVICE TO MONTANANS

1/27	INTRODUCED		
1/27	FIRST READING		
1/27	REFERRED TO STATE ADMINISTRATION		
1/28	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/03	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED		
2/09	2ND READING PASSED	48	0
2/10	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/13	FIRST READING		
2/15	REFERRED TO APPROPRIATIONS		
2/28	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED AS AMENDED	92	7
3/27	3RD READING CONCURRED	88	8
	RETURNED TO SENATE WITH AMENDMENTS		
3/30	2ND READING AMENDMENTS CONCURRED	50	0
3/31	3RD READING AMENDMENTS CONCURRED	48	0
4/04	SIGNED BY PRESIDENT		
4/05	SIGNED BY SPEAKER		
4/06	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 339		
	EFFECTIVE DATE: 07/01/95		

SB 266 INTRODUCED BY CRIPPEN, ET AL.

REVISE EXISTING SALARIES FOR SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES

1/27	INTRODUCED
1/27	FIRST READING
1/27	REFERRED TO JUDICIARY
1/28	FISCAL NOTE REQUESTED
2/03	FISCAL NOTE RECEIVED
2/06	FISCAL NOTE PRINTED
2/07	HEARING
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED

SENATE BILL NO. 264

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PROFESSIONAL EMPLOYER ORGANIZATIONS LICENSING ACT; REQUIRING LICENSING OF AND STANDARDS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; REQUIRING PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE COVERAGE; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING EXEMPTIONS AND PENALTIES; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] authorizes the department of labor and industry to adopt rules regarding professional employer organization and group licensing. It is intended that the department develop rules similar to those adopted by other states that regulate professional employer licensing organizations and groups and develop rules to provide for the reciprocal licensing provisions provided for in [this act].

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through 14] may be cited as the "Montana Professional Employer Organizations and Groups Licensing Act".

(2) The legislature recognizes that there is a public need for professional employer services and finds it necessary in the interest of public health, safety, and welfare to establish standards for the operation, regulation, and licensing of professional employer organizations and groups in this state.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 14], unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under [sections 1 through 14].

(2) "Client" means a person who obtains all or part of its workforce from another person through a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.

(4) "Department" means the department of labor and industry.

(5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a person hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) "Licensee" means a person licensed as a professional employer organization or group under [sections 1 through 14].

(7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.

(8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

(i) a professional employer organization or group assigns employees to perform services for a client;

(ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

(iii) the employer responsibilities are shared by the professional employer organization or group and the client.

(b) The term does not include:

(i) services performed by a temporary service contractor;

(ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering into professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group; and

(iii) arrangements exist for employment of an independent contractor as defined in 39-71-120.

(9) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

(10) "Professional employer organization" means:

(a) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

(b) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(11) "Temporary service contractor" means a person conducting a business that hires its own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

NEW SECTION. **Section 3. License required -- exemption -- rulemaking authority.** (1) On or after [the effective date of this act], a person who acts as a professional employer organization or group by entering into a professional employer arrangement with a client in this state without a license or who violates the provisions of [sections 1 through 14] may be subject to the penalties provided in [section 11].

(2) The provisions of [sections 1 through 14] do not apply to a labor organization, the state or its political subdivisions, the United States, or any programs or agencies of those entities.

(3) A license issued under [sections 1 through 14] remains the property of the department and may not be transferred.

(4) The department may adopt rules to implement the provisions of [sections 1 through 14].

NEW SECTION. **Section 4. Initial license application -- application fee -- standards.** (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of [sections 1 through 14]. The application fee is:

(a) $750 for a resident or nonresident unrestricted license; and

(b) $500 for a restricted license.

(3) As a condition of licensure under [sections 1 through 14], an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group shall meet the following standards:

(a) An individual must be 18 years of age or older.

(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that no written partnership agreement exists.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation and provide a certificate of good standing from the secretary of state demonstrating that the corporation is qualified to do business in this state.

(d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company and provide a certificate of good standing from the secretary of state demonstrating that the company is qualified to do business in this state.

(e) A group:

(i) must be authorized to act on behalf of the group;

(ii) shall include for each professional employer organization within the group the information required in subsection (4); and

(iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group. A professional employer group may satisfy the reporting and financial requirements of [section 9] on a consolidated basis.

(5) An applicant shall also provide:

(a) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.

(b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with

common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and

(c) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

(6) Except for an applicant who is granted a restricted license under subsection (8), an applicant shall maintain a tangible accounting net worth of not less than $50,000, evidenced by providing a financial statement prepared in accordance with generally accepted accounting principles and accompanied by a compilation report by an independent certified public accountant. Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted. A financial statement submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group. In meeting the specified net worth requirement, the applicant may provide to the department a surety bond, letter of credit, or marketable securities acceptable to the department. A surety will not be acceptable to satisfy this requirement unless the applicant submits sufficient evidence to satisfy the department that the surety has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification by the department or its agent.

(7) The applicant shall maintain a positive working capital, as determined in accordance with generally accepted accounting principles.

(8) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

(a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups, the applicant is licensed and in good standing in the state of residence or domicile, and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under [sections 1 through 14];

(b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

(9) An applicant for a nonresident or restricted license shall file, on a form provided by the

department, an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this state.

(10) A license issued under this section remains the property of the department and may not be transferred.

NEW SECTION. **Section 5. Denial of license application or renewal -- hearing.** (1) The department shall deny a license application or an application to renew a license if:

(a) the application is not fully completed or properly executed;

(b) documents required to supplement the application are not included in the application packet or are inadequate;

(c) the nonrefundable application or license fee is not submitted or is incorrectly submitted with the application packet;

(d) the applicant or any person named in the application misrepresents material in the application;

(e) the applicant is determined by the department to lack good moral character, business integrity, or financial responsibility; or

(f) the department determines that the applicant has failed to meet or maintain any requirement of [sections 1 through 14].

(2) Conviction of a crime within the last 7 years does not automatically bar an applicant from obtaining a license or bar a licensee from renewing a license. The department shall consider the type of crime committed, the crime's relevancy to the employee leasing industry, the length of time since the conviction, and any other factor considered relevant by the department.

(3) The department or its agent shall furnish the applicant with a written statement of the reason or reasons for denying the license or license renewal application.

(4) An applicant or licensee may request a hearing before the department within 30 days after receiving the written denial statement. The hearing and appeal must follow the procedures provided in Title 2, chapter 4, parts 6 and 7.

(5) During the hearing and appeal process, a licensee may continue to operate unless the circumstances warrant the ordering of immediate cessation of operations. If the renewal application is rejected, the licensee shall cease operations within this state 30 days after receiving written notification. A licensee who does not comply with the department's order to cease is subject to the penalties provided

in [section 11].

(6) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation of an order to cease occurs, an action for an injunction, order, or other civil remedy in district court to enforce its order.

(7) An applicant or licensee is ineligible to reapply for a license for 1 year following final department action denying the issuance of or renewal of a license. The 1-year restriction does not apply to an administrative denial or nonrenewal if the denial or nonrenewal was caused:

(a) by an inadvertent error or omission on the application;

(b) by experience that was insufficiently documented to the department at the time of the previous application;

(c) by a failure to submit the required fees; or

(d) when the applicant or licensee was determined to be ineligible because an individual no longer associated with the professional employer organization or group was determined to lack good moral character, business integrity, or financial responsibility.

NEW SECTION. **Section 6. License renewal.** (1) Except as provided in subsection (5), a license issued under [sections 1 through 14] is valid for 1 year from the date of issuance unless suspended or revoked.

(2) At least 30 days prior to the expiration of the license, the licensee shall submit an application for renewal of a license on a form prescribed by the department and accompanied by the license fee, as provided in [section 7].

(3) A late renewal application may not be processed prior to the expiration of the licensee's current license. A person engaged in an unlicensed activity is subject to the penalty established in [section 11].

(4) Denial of a renewal license is subject to review under the provisions of [section 5].

(5) If the application fee required in [section 4] is paid and accepted, then no additional license fee is required for the first year.

NEW SECTION. **Section 7. Renewal fees.** (1) The fee for the renewal of a resident or nonresident unrestricted license is $750.

(2) The fee for the renewal of a restricted license is $500.

(3) The application fee required in [section 4] does not apply to the renewal of an unrestricted license.

(4) A restricted license may not be granted to a professional employer organization or group that is a resident of or domiciled in another state if the state requires licensing but does not grant a similar privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.

(5) Fees collected must be used by the department to implement [sections 1 through 14].

NEW SECTION. **Section 8. License suspension, revocation, or nonrenewal.** (1) In addition to the penalty provided in [section 11], the department may suspend for up to 1 year, may permanently revoke, or may refuse to renew a license issued under [sections 1 through 14] if, after notice to the licensee of the charges and after a hearing, the department finds that any of the following exists:

(a) a cause for which issuance of the license could have been refused had it been known to the department at the time of issuance;

(b) a violation of an order of the department or noncompliance with any provision of [sections 1 through 14];

(c) procurement of or attempting to procure a license through misrepresentation or fraud;

(d) failure to provide a written response to a written inquiry from the department or its agent within 30 days after receiving an inquiry; or

(e) failure to meet or maintain any other requirement of [sections 1 through 14].

(2) If a license is suspended, revoked, or not renewed, the department shall:

(a) immediately notify by certified mail the licensee and the licensee's workers' compensation carrier; and

(b) require the licensee to notify each client by certified mail, return receipt requested, of the suspension, revocation, or nonrenewal using language furnished by the department and to provide the department with evidence of client notification.

(3) Upon notification, the licensee may appeal the decision of the department pursuant to the procedure provided in [section 5].

NEW SECTION. **Section 9. Requirements of licensee.** (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party.

The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker subject to a professional employer arrangement, the client shares joint liability for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and

(d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The employer shall disclose to the client a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the

quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter.

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating an employee leasing arrangement or professional employer arrangement.

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state. When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization or group is the employing unit as defined in 39-51-201.

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of workers' compensation coverage for all employees assigned to any client location in this state.

(5) A professional employer organization or group is the employer for sponsoring and maintaining

employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements.

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

(d) the policy limits on each insurance policy; and

(e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974, as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of [sections 1 through 14]. Subject to the provisions of [sections 1 through 14], a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

(9) A provider of workers' compensation insurance shall base classifications and rates applicable to the payroll of a worker subject to either a professional employer arrangement or an employee leasing arrangement as though the worker had been a direct employee of the client. A licensee shall maintain payroll records by classification for each client during the term of the arrangement. If an experience

modification has been established for the client, that experience modification may be applied by the insurer to the premium for the client's leased workers.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and employers' liability and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or employers' liability or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to [sections 1 through 14] does not constitute the sale of insurance under Title 33.

(12) (a) The existence of a professional employer arrangement does not constitute employment within the meaning of 39-51-204 if the client is a sole proprietor or a working member of a partnership.

(b) An individual working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.

NEW SECTION. **Section 10. Deceptive practices prohibited.** A professional employer organization or group may not:

(1) make, issue, circulate, or cause to be made, issued, or circulated an estimate, illustration, circular, statement, advertisement, sales presentation, omission, or comparison that misrepresents the benefits, advantages, conditions, or terms of a professional employer arrangement or that is otherwise untrue, deceptive, or misleading;

(2) enter into an agreement to commit or by concerted action commit an act of boycott, coercion, or intimidation that results in unreasonable restraint of or monopoly in the business of professional employer

services;

(3) file with the department or other public official or make, publish, disseminate, circulate, or deliver to a person a false statement of financial condition with the intent to deceive;

(4) knowingly:

(a) make a false entry of a material fact in a book, report, or statement of a person; or

(b) omit a material fact pertaining to the business of the person from a book, report, or statement of that person;

(5) permit the use or filing of a name, trade name, fictitious name, or business identity that is the same as or similar to or that may be confused with the name, trade name, fictitious name, or business identity of an existing licensee, governmental agency, or nonprofit organization; or

(6) commit any other practice determined by department rule to be deceptive.

NEW SECTION. **Section 11. Disciplinary action against licensee -- penalties.** (1) The department may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person who:

(a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

(b) engages in fraud, deceit, misrepresentation, or misconduct in:

(i) obtaining or providing workers' compensation or health coverage;

(ii) the classification of employees;

(iii) the reporting of employee wages for purposes of unemployment insurance or workers' compensation benefits; or

(iv) the operation of a professional employer organization or group;

(c) conducts business without a valid license;

(d) fails to maintain evidence of workers' compensation insurance coverage;

(e) transfers or attempts to transfer a license issued pursuant to [sections 1 through 14]; or

(f) violates the provisions of [sections 1 through 14] or a rule issued pursuant to [sections 1 through 14].

(2) A person who fails to comply with the provisions of [sections 1 through 14] is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to $500, imprisonment for not more than 1 year, or both.

NEW SECTION. **Section 12. Investigations -- audits -- reviews.** (1) The department or its agent may perform an investigation, audit, or review necessary to determine whether a person has violated any provision of [sections 1 through 14] or any rule promulgated by the department to implement [sections 1 through 14].

(2) Except as provided in subsection (3), material compiled by the department or its agent in an investigation, audit, or review pursuant to this section is a public record and may be disclosed.

(3) Financial information, client lists, and lists of workers that are assigned by a professional employer organization or group and that are obtained by the department or its agent during an investigation, audit, or review are confidential and are not subject to disclosure.

NEW SECTION. **Section 13. Disclosure of information.** (1) The department may not disclose to any person the records, statements, or documents received from an applicant, client, or professional employer organization or group, except:

(a) information necessary for state agency personnel to perform official duties; or

(b) in response to an order received by a court of competent jurisdiction upon a finding that the disclosure of the record, statement, or document is necessary because the merits of disclosure clearly exceed the demand for individual privacy.

(2) The department may publish or make available to the public reasonable statistical data or reports regarding professional employer organizations or groups if the data or reports protect the identity of an applicant, client, or professional employer organization or group.

NEW SECTION. **Section 14. Other law.** (1) [Sections 1 through 14] do not exempt a client of a professional employer organization or group or an employee assigned to a client by a professional employer organization or group from other local, state, or federal license or registration requirements.

(2) An employee who is licensed, registered, or certified under law and who is assigned to a client location is an employee of the client for purposes of the license, registration, or certification.

(3) Except as provided in a professional employer arrangement, a professional employer organization or group is not liable for the general debts, obligations, profit losses, business goodwill, or other damages of a client with which it has entered into a professional employer arrangement.

NEW SECTION. **Section 15. Codification instruction.** [Sections 1 through 14] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 14].

NEW SECTION. **Section 16. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 17. Effective date.** [This act] is effective July 1, 1995.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0264, as introduced

SCRIPTION OF PROPOSED LEGISLATION:
act establishing the Montana Professional Employer Organizations Act; requiring licensing and standards for professional employer organizations and groups; requiring professional ployer organizations and groups to provide workers' compensation and unemployment insurance verage; providing for disclosure of information; providing exemptions and penalties; and oviding an effective date.

SUMPTIONS:
pt of Labor & Industry

Approximately ten corporations equivalent to the sort identified by this proposed legislation currently exist in-state, and hundreds more out of state, so the total number of program participants is uncertain. (10 corporations x $750 application fee in FY96 and 10 corporations x $750 renewal fees in FY97).

The workload associated with the functions of this legislation will be absorbed by Workers' Compensation Regulation Unit within Employment Relations Division, Department of Labor and Industry.

tate Compensation Insurance Fund

Every employer in Montana must provide workers' compensation coverage for their employees.

"Professional Employer Organizations" (PEO) are employers of employees who are assigned to "client" employers to perform work on a permanent basis.

Both the PEO and the client are the immediate employer of the worker for workers' compensation purposes under a "professional employer arrangement" or "employee leasing arrangement".

Both the PEO and client are entitled to the exclusive remedy protection of the workers' compensation act under a professional employer arrangement.

PEOs must obtain a license to do business in Montana through the Department of Labor and Industry.

A workers' compensation insurer must base classifications and rates applicable to payroll as though the leased employee were a direct employee of the "client".

A PEO must maintain separate payroll records for each client during the term of a professional employer arrangement or employee leasing arrangement.

10. If the client has developed an experience modification factor, that experience factor may be used by an insurer in determining premium for a leased worker.
11. A sole proprietor or working member of a partnership is not engaged in "employment" under a professional employer arrangement.
12. This act does not apply to persons doing business as a "temporary service contractor".
13. The State Fund will be required to amend its contract of insurance and notify all active policyholders of the contents of this bill.
14. The State Fund will be required to issue a single master policy to a PEO or group of PEOs naming each client of each PEO or group of PEOs as an additional named insured.

(continued)

Dave Lewis 2-3-95

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-3-95

DELWYN GAGE, PRIMARY SPONSOR DATE

15. A PEO may submit payroll related taxes, insurance premiums and employee benefit reports on a consolidated basis.
16. The State Fund will need to contract for programmer services to implement this legislation.
17. Individual client loss data may be obliterated, thereby preventing calculation of individual client experience modification factors.

FISCAL IMPACT:

Dept of Labor & Industry
Employment Relations Division (04)

	FY96 Difference	FY97 Difference
Revenues:		
Fees, SSR (02)	7,500	7,500
Workers' Comp Assessment, SSR (02)	(7,500)	(7,500)
	0	0

State Compensation Insurance Fund
Expenditures:

	FY96 Difference	FY97 Difference
Operating Expenses	47,150	0

TECHNICAL NOTES:

Department of Labor & Industry

1. While it is assumed all Professional Employer Organizations (PEOs) will pay their UI Contributions, in the event a PEO ceases operation without paying its UI contributions, the UI Division would seek to collect the contributions from the client company. In such a situation, the client company might effectively pay UI contributions twice. If the client company was unable to pay, and depending upon the amount of benefits charged against the client company, any reduction to the UI trust fund would be recovered by possible increased contribution rates to all employers.
2. The bill provides that "for unemployment reporting purposes, each professional employer organization (PEO) or group is the employing unit as defined in 39-51-201". If the PEO does not report employee wages by client company, failure of the PEO to pay unemployment insurance taxes would result in the UI Division having to determine the liability of each client company. Depending upon the size and number of clients of a PEO, identifying the employees of each client company could require considerable manhours as the UI Division would need to investigate and construct a wage report for each client company. Fiscal impact of this potential is indeterminate.
3. This bill gives authority to Department of Labor and Industry, yet codification instructions are to place it in Title 37 where the Department of Commerce has general authority.
4. The penalty is less than the cost of the license.

State Compensation Insurance Fund

5. PEOs and "clients" may not both be eligible for the exclusive remedy protections of the workers' compensation act under Art. II, Sec. 16 of the Montana Constitution.

(continued)

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

Yes. The 'clients' and the 'employees' of the fee-paying PEOs benefit by having the state establishing standards for the PEOs. These standards would function to serve in the interest of public health, safety and welfare, especially of the employees and the clients.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

The funds are kept separate so that they are only used for the purpose for which they were collected.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? XX Yes ____ No (if no, explain)

d) Does the need for this state special revenue provision still exist? ____ Yes ____ No (Explain)

This bill establishes this state special revenue.

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

The legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending will not be affected by this dedicated revenue provision. The agency will track detail on SBAS to provide this information to the legislature on request.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

Yes, as provided in this bill.

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

The dedicated revenue provision allows for specific tracking of the fund balance. If this activity were general funded, the program could be accounted for adequately, except for accounting for the fund balance.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **SENATOR LARRY BAER, ACTING CHAIRMAN** on February 7, 1995, at 1:00 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 179
SB 238
SB 264

Executive Action: None.

SENATOR LARRY BAER served as the Chairman for this hearing.

HEARING ON SB 179

Opening Statement by Sponsor:

SENATOR BILL WILSON, SD 22, Great Falls, stated there has been no minimum wage increases in Montana since 1991, when the minimum wage was indexed to the federal increase. Currently, a person working full-time, year around will make approximately $8,400. The wage is far under the federal poverty level for a three member family. Other workers had hourly wage increases of $1 since 1991, but the minimum wage earner continues to fall farther

Questions From Committee Members and Responses:

SENATOR AKLESTAD asked why SB 238 will not cost anymore or why would it cost less. **SENATOR VAN VALKENBURG** stated the amendment addresses the agreed on benefit package between the temporary employer and the employees cannot exceed the cost of state benefits that would be otherwise paid. If the state government is paying PERS for the employee that will never vest or collect, the amount is of actuarial minuscule effect to the PERS system. It is unfair to apply the PERS deduction to the temporary employee who will not invest. **SENATOR AKLESTAD** asked if current temporary employees have benefits that will now be negotiated. **Mr. Morris** stated the union has negotiated an agreement, which covers permanent, temporary employees which are beyond the contract.

Closing by Sponsor:

SENATOR VAN VALKENBURG closed the hearing on SB 238. **SENATOR VAN VALKENBURG** stated the bill will exempt temporary university system employees who have negotiated an alternative benefits package with the university system from the requirements to pay certain state-mandated benefits. **SENATOR VAN VALKENBURG** urged the committee to return a DO PASS recommendation on SB 238.

HEARING ON SB 264

Opening Statement by Sponsor:

SENATOR DEL GAGE, SD 43, Cut Bank, stated SB 264 establishes licensing and regulation of Professional Employer Organizations (PEOs). **SENATOR GAGE** defined the PEO to be: An organization that provides an integrated and cost effective approach to the management of critical human resource responsibilities and employer approach to the management of critical human resource responsibilities and employer risks for its clients. The PEO delivers these services by establishing and maintaining an employer relationship. The worker is assigned to a client and by contractually assuring substantial employment rights, responsibility and benefits. The thrust of SB 264 is to identify that the PEO are management specialists, especially for small businesses. Ninety-two percent of all businesses are small businesses.

Mr. Howard Recht, Recht & Recht, Attorneys, representing United Staffing Alliance of Utah, stated he helped author SB 264. A joint legislative committee worked on Workers Compensation Alternative. **SENATOR JOHN HARP** requested information focusing on the PEO industry. SB 264 defines the co-employment relationship. A PEO approaches the small business owner and enters into an agreement to assist the owner in employing existing employees. The PEO does not bring in employees from the outside; does not have separate employees that are utilized. The PEO uses the established employees to help take over administrative

responsibilities associated with employment relationships. PEOs assist in satisfying regulations, laws on state and federal levels. PEOs do the payroll and give the owner/manager the opportunity to focus attention on making money instead of fighting administrative rules and regulations. PEOs assist in providing benefits to the employees that would not otherwise be available because of economies of skill that a PEO brings to the workplace. PEOs can offer some benefits the small business owner cannot match at the same rate. In particular, the rate of insurance benefits can be provided and provided with better rates and better coverage.

Mr. Recht stated SB 264 recognizes the relationship existing in the state, which has given foundation to state agencies dealing with the PEO industry. Senate Bill 264 addresses state agency concerns about the ability of PEOs to circumvent laws, and to make sure PEO businesses are economically sound, viable, and complies with laws. An outside, independent CPA is required to audit the business periodically. Senate Bill 264 does not affect the national labor relations act or parallel other Montana legislation.k Workers' Compensation laws cannot be circumvented. The Workers' Compensation system exclusive remedy applies to both traditional employers and PEOs. **Mr. Recht** urged the committee to pass SB 264.

Byron McCurdy, National Association of Professional Employer, Board of Directors, and Northwest Chapter President, stated the association represents more than 400 companies in the industry and over a quarter million employees. **Mr. McCurdy** stated he has been part of the industry for 13 years, and has served in the Idaho State Legislature. He sponsored PEO legislation in Idaho, Utah and Oregon. **Mr. McCurdy** stated he owns a PEO and employs over 3,500 employees in 8 western states. SB 264 is based on the national association's model legislation. The bill goes beyond the model legislation, Labor unions have opposed similar legislation, viewing PEOs as competition. **Mr. McCurdy** said he has never ran into collective bargaining agreement, or seen a client who has had a collective bargaining agreement. **Mr. McCurdy** urged support of SB 264.

Terry Keating, President, United Staffing of Montana, Billings, MT and Regional Vice-president of Idaho, Montana, and Utah Association, stated without state laws and regulations, PEOs work within an atmosphere of uncertainty. PEOs cannot forecast their business operations, recruit new business, and are unable to tell prospective customers whether or not their company is bonded. Financial strength cannot be revealed. Senate Bill 265 focuses on these issues. Since August 1994, state agencies have worked with the PEO industry to write a consensus bill. **Mr. Terry Keating** stated he is one of many organizations who hope to do business or expand business in Montana. Competition is appreciated. Competitive PEOs are apprehensive to do business in Montana because of the lack of governing regulations. **Mr. Terry Keating** urged support of SB 264.

Laurence Hubbard, State Fund, Helena, MT, stated support of SB 264. **Mr. Hubbard** addressed the "Less than Desirable" issue. **Mr. Hubbard** said individuals or other entities may come to do business in Montana as leasing entities. This causes concern. **Mr. Hubbard** distributed handouts **(EXHIBIT 8)**. Senate Bill 264 is a comprehensive regulatory bill intended to insure only legitimate leasing enterprises do business in Montana. Abuses can and do occur in leasing arrangements. Senate Bill 265 applies to all entities coming to Montana to do business and to be employers. Montana needs regulations that will adequately protect Montana's business interest. **Mr. Hubbard** described the "Rent a MOD" or "MOD laundry" problems encountered at State Fund. **Mr. Hubbard** explained that every employer, subjected to Workers Compensation, develops an experience rating that is part of the process to insure that all industrial loses are attributable to both the industry and the employers. The Workers' Compensation System has hundred of classifications, which are designed to cover a myriad of business operations. The basic rate is called a manual rate. Every employer has a classification code and rate, particular to the individual industry.

Mr. Hubbard described employers within select industries who have different hire loss experiences. Many have better safety and lower loss experiences than other employers. The good safety record employers are rewarded with credit. Businesses with bad safety records pay a debit mod, which is a higher premium. The potential leasing industry problem occurs when an employer with a bad experience joins a leasing company with a good experience. The employer with a bad experience can potentially launder their modification experience. A good loss experienced employee may be penalized for the bad business arrangement, and their good experience may not be tracked. Consequently, they may be penalized for being part of the questionable business.

Mr. Hubbard discussed that insurers of PEO entities must report to the Workers' Comp all data, by individual client, including payroll by classification. They also must report by abilities. On page 11, line 27, SB 236 inserts "insurer" for the word "provider". The permissive "may" is replaced with "shall". The intention is to insure the client's experience and exposure in the workplace, which is reported and tracked through the system. There needs to be an incentive or requirement so that insurers can obtain information on a per client basis. Experience, loss history and premium classifications are reported. If the State Fund cannot tract losses indirectly, all employers through the rate system will suffer the consequences of loss histories. According to page 4, line 21, a PEO group can meet reporting and financial obligations on a consolidated basis. The concern is the co-mingling of specific client information or specific loss histories.

Mr. Hubbard pointed out the issue of exclusive remedy, which is a valuable employer's tool. SB 264 allows a co-employment relationship. The PEO is the employer, as well as the client for

the purpose of exclusive remedy. According to the Montana Constitution, no person shall be deprived of the full redress for injuries incurred in employment for which another person may be liable, except to fellow employees and the immediate employer who hires the employee. The State Fund believes there is a legal challenge potential for dual exclusive remedy protection, between the PEO and the client firm. This committee needs to be aware of the potential problem. The bill distinguishes between professional employer arrangements and the employee leasing arrangements. On page 10, line 17, the employee leasing arrangement says only the PEOs are entitled to the exclusive remedy protection. The fear is if there is an employee leasing arrangement, and not the special employer arrangement, will the client be exposed to a third party law suit, resulting from the injury that may occur to a leased employee.

Stan Kaleczyc, National Council of Compensation Insurance (NCCI), stated the council provides a classification system, establishes advisory classification rate for Montana employers, as well as calculates MOD factors. The Council supports SB 264 an agrees the amendment is necessary to make certain the experience tracts back to the actual work place, where the employees are located. If this is done, the integrity of the rating and classification system will remain intact. NCCI supports their organizational concept and model language. **Mr. Kaleczyc** urged support of SB 264.

Rod Sager, Administrator, Unemployment Insurance Division, Department of Labor and Industry. Mr. Sager said the department has worked with the sponsors, and they support PEO legislation. **SENATOR GAGE'S** amendment rectifies departmental concerns. Group reporting of client information for tracking purpose will make sure the UI Tax is assigned properly. The client company would be liable for taxes in case the PRO goes out of business. The department must be able to track such information. **Mr. Sager** also expressed concern for the PEO leaving the state without paying taxes. In order to show credibility, the bill addresses the need for the PEO to establish a $50,000 net worth. If the workers are true employees, they need to be paid for being out of work. There may be no employer to go back to. Therefore, the department is concerned over the protection of the UI Trust Fund. Other states have considered security deposits, based on the amount of annually adjusted payrolls; surety bonds, based on payroll; or monthly or prepaid UI tax payments.. New York State requires a $50,000 bond **(EXHIBIT 9)**.

Jacqueline Lenmark, American Insurance Association, Helena, MT stated the association advises private workers compensation insurance companies. PEOs are unique business entities. Insurance concerns need to be dealt with carefully. AIA proposes that the NAIC language is used to address these concerns. The language is tailored to meet insurance problems of the PEOs. Ms. Lenmark directed the committee attention to page 11, subsection 9. There are responsibilities that are the insurers, not the

PEOs. The PEO's licensing should not be jeopardized because of the PEO responsibilities. AIA suggests the insurers' responsibilities and the insurance specific requirements are moved to a separate section in the bill, so the requirements are not directly affecting the insurance licensing.

James Tutwiler, Montana Chamber of Commerce, Helena, MT, stated support of SB 264.

Chuck Hunter, Department of Labor and Industry, Helena, MT, submitted written testimony **(EXHIBIT 10)**.

Opponents' Testimony:

Don Judge, AFL-CIO, Helena, MT, stated if the bill remains in the current form, the union opposes the legislation. Worker Compensation problems need to be corrected. **Mr. Judge** pointed out another problem. PEOs must not be allowed to engage in the activities of professional strike breakers. The AFL-CIO offered an amendment to prohibit the use of professional strike breakers when there is a labor dispute in progress.

Questions From Committee Members and Responses:

SENATOR AKLESTAD asked who are the "less than desirable" entities **SENATOR GAGE** stated certain people may want to start a PEO, but do not have financial backing. Licensing requirements are necessary. **Mr. McCurdy** stated in his last week testimony that his company made a quarter million federal tax deposit for one day's worth of payroll. There are also concerns about companies abusing the modification rating system. The current bill addresses the abuse. A modification fact will be assigned after the client's experience rating is checked. Companies have gone into other states and have "taken" better modification factors. A company may have a 1.5 MOD factor, but chooses to come back into the system as a new leasing company. This is a blatantly fraudulent act.

SENATOR BARTLETT asked for comments on **Mr. Hubbard's** explanation about the employee leasing arrangement provision. The exclusive remedy is received by the temporary agency, and not the business where the temporary employee is working. The employee, subjected to an employee leasing arrangement, is solely the employee of the PEO. The PEO is the sole employer, and receives the sole benefit. Usually, leased employees are assigned to do a particular task. An example would be a company who specializes in mail room employees. Such employees do not become the client customer's employees.

SENATOR BARTLETT asked **Mr. Sager** about the amendment on page 10, line 24, which proposes that the words "or group" be struck. The phase is used throughout the bill. **Mr. Sager** remarked he does not want the words struck. **Mr. Sager** stated the words are a compromise. The department does not want to lose track of

pertinent information by having information consolidated. Most PEOs keep very detailed records. If the legislation requires specific information, there would be no hardships in providing the information.

CHAIRMAN KEATING asked **Mr. Hubbard** about the employee leasing arrangements, as identified in the bill. From an insurers perspective, would there be a potential exposure for clients, instead of the PEOs. **Mr. Hubbard** answered there are potential problems. The national professional employer leasing organizations prefer to retain the distinction between the temporary service contractors and the leasing type contractors. The primary distinction is the emphasis between temporary employment versus on going, or permanent type employment. **Mr. Hubbard** expressed confusion concerning the definition of the word "staff" or "management". He stated the words could mean the line workers or could mean the top management. **Mr. Hubbard** submitted written testimony. **(SEE EXHIBIT 8).**

Closing by Sponsor:

SENATOR GAGE closed the hearing on SB 264. **SENATOR GAGE** stated there are 12 states that have passed similar PEO legislation. In addition, approximately 26 states legislatures are currently considering similar legislation. Certainly, PEOs are an organization and a business service that is needed in the state of Montana. **SENATOR GAGE** stated he will review all the amendments to analyze how they fit into the purpose of the legislation.

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE February 7, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	★		
SUE BARTLETT	★		
STEVE BENEDICT	★		
JIM BURNETT	★		
CASEY EMERSON	★		
FRED VAN VALKENBURG	★		
BILL WILSON	★		
GARY AKLESTAD, VICE CHAIRMAN	★		
TOM KEATING, CHAIRMAN	★		

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EXHIBIT NO. 8 1 of 5
DATE Feb 7, 1995
BILL NO. SB 264

SB 264
TESTIMONY OF THE STATE COMPENSATION INSURANCE FUND

Mr. Chairman, members of the Committee, my name is Laurence A. Hubbard appearing today as a representative of the State Compensation Insurance Fund.

I would like to premise my comments today by stating the State Fund is not opposed to the concept of legitimate employee leasing arrangements. We support legitimate forms of business enterprise designed to support or expand existing businesses. The sponsors of this Bill have dedicated considerable effort in its drafting. The State Fund supports appropriate regulation of the employee leasing industry and believes this Bill accomplishes much of that goal.

You have heard testimony in support of SB 264 from representatives of the employee leasing industry which have exalted the virtues of employee leasing to Montana business. While we agree many benefits exist, there are some areas concerning employee leasing that create opportunity for potential fraud and abuse. We generally support the appropriate regulation of the employee leasing, but the Bill as written fails to adequately address areas of potential abuse and fraud that are of most concern to workers' compensation insurers. The State Fund acknowledges the willingness of the Bill's proponents to incorporate some changes that begin to deal with our concerns. Nonetheless, we believe the Bill needs to be amended to provide reasonable protection against potential fraud and abuse.

One of the most important elements of workers' compensation insurance is the tracking and reporting of an employer's loss experience. The loss experience of a particular industry is reflected in the basic or manual rate for that industry. For instance, the manual rate for the radio or television

S... L... BOR & EMPLOYMENT
EXHIBIT NO. 8
DATE 2/7/95
BILL NO. SB264

broadcasting industry (7610) is $1.11 per $100 dollars of payroll. On the other hand, the manual rate for the sawmill industry (2710) is $38.73 per $100 dollars of payroll. The manual rates for these two industries reflect among other factors the loss history of those industries.

Within those industries there are many types and sizes of employers with varying hazards from employer to employer. The workers' compensation insurance system attempts to acknowledge those variations within an industry and reflect losses of individual employers within that industry through the experience rating plan. The experience rating plan penalizes employers with unsafe operations and provides an incentive to improve work-place safety. When an employer qualifies for an experience rating, it is assigned what is commonly called an experience modification factor, or MOD. FACTOR. The system must be able to collect and segregate the losses of each individual employer in order to properly administer the experience rating plan and assign an experience modification factor. If the system is unable to track an employer's loss experience then the experience rating plan is defeated. The end result means losses will indirectly be reflected in the manual or basic rate for all industries. It would be unfair for the broadcast industry to subsidize the manual rate for the saw mill industry.

The employee leasing industry creates a substantial risk that business owners will take advantage of schemes intended to avoid their loss experience. Common schemes include what is termed "mod laundering", or "rent a mod." The rent a mod scheme results when an employer with an experience rating of above 1.0 merely contracts with a leasing company. The leasing company, if newly formed, typically is given a 1.0 experience rating for the first three years of operation. The employer or "client" can essentially "rent" the leasing company's experience rating without any change in safety practices, and thereby circumvent the experience rating process. Mod laundering

can occur where an employer splits its payroll; keeping the old policy intact and reporting lower risk employees through that policy and the remaining employees payroll is funneled through a leasing arrangement. Thus, over time, the original experience rating is laundered. Conversely, an employer that has a good experience rating prior to entering into a leasing type arrangement could lose that favorable rating when the employer leaves that arrangement. That employer might be unfairly penalized when purchasing insurance outside the leasing context.

The State Fund encourages amending page 11, line 30, after the word "arrangement" to read: The insurer of a licensee must report to its workers' compensation rating organization all data, by client, including payroll by classification and liabilities for each client during the term of the policy." We believe this language will go a long way to preventing premium fraud and abuse.

We also suggest two additional amendments to those proposed by Sen. Gage. At page 11, line 27, instead of the word "provider" we suggest using the word "insurer". At page 12, line 1, we suggest replacing "may" with "shall".

Another concern regarding the Bill as proposed relates to apparently contradictory provisions. At page 4, line 21, a leasing group is permitted by the Bill to satisfy reporting requirements of Section 9 on a "consolidated basis". A "group" may consist of separate legal entities. In addition, a "group" may apparently obtain its own license to operate as a leasing business. In that event, the State Fund would not only need to separately track "client" employer payroll and losses but also each leasing entities separate experience if applicable. This language interferes with the ability to distinguish between the business operations of each professional employer company within a group. Regulatory authorities will be prevented from tracing responsibility for benefits or taxes if the trail is obscured by commingling separate business operations within a "group". We ask that this

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8 4 of 5
DATE Feb 7, 199
BILL NO. SB 264

sentence be stricken.

Lastly, we feel obligated to point out issues relating to the exclusive remedy protection of the Workers' Compensation Act. SB 264 provides for what is termed "co-employment" of the leased workers'. A provision in the Bill artfully states that both the professional employer organization AND the "client" are the immediate employer of an employee supplied under a professional employer arrangement. That language parallels Art. III, Sec. 16 of the Montana Constitution which reads in relevant part: "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such employer provides coverage under the Workers' Compensation Laws of this state." The sponsors did a very commendable job in drafting the Bill to conform to the Constitutional language. However, there may be a legal challenge to the provision of exclusive remedy for both the professional employer organization and the "client" business. For example, page 10, line 17 provided only that the PEO is entitled to the exclusive remedy protection, not the "client". The client may be exposed to third party claims for injury caused to a leased employee.

In addition, the Constitution grants fellow employees of an injured worker exclusive remedy protection for injury caused to co-workers. The Bill provides only that the PEO and client are entitled to the exclusive remedy in a professional employer arrangement. Again, in an employee leasing arrangement the PEO is the employer. Therefore, an injury to a leased employee caused by a non-leased employee could expose the non-leased employee to a personal injury lawsuit. The distinction between the two types of leasing arrangement are not absolutely clear, and we see

potential exposure to lawsuits that may not be avoidable.

The State Fund supports passage of SB 264 with the amendments I have suggested.

EXHIBIT NO. 01
DATE 2-7-95
BILL NO. SB 264

PROPOSED AMENDMENT TO SENATE BILL No. 264 - bl
Introduced Copy (White)
Senate Committee on Labor and Employment Relations

1. Page 10, line 24.
Following: "organization"
Strike: "or group"

2. Page 10, line 25.
Following: "39-51-201"
Insert: "and shall keep separate records and submit separate quarterly wage lists for each of its clients."

Dyr. Hager

S. ... LABOR & EMPLOYM...
EXHIBIT NO. 10 1 of 2
DATE Feb 7, 199...
BILL NO. SB 264

TESTIMONY ON SENATE BILL 264
CHUCK HUNTER, DEPARTMENT OF LABOR AND INDUSTRY

Mr. Chairman, my name is Chuck Hunter, representing the Department of Labor and Industry. We stand as proponents of Senate Bill 264.

For a number of months, we have been working with representatives from the leasing industry to bring some clarity and definition to this emerging industry. While I would hesitate to call it a marriage made in heaven, I will describe it as recognition, both by the leasing industry, and by the department, that some basic regulation is needed to protect both the leasing industry and employers and workers in Montana.

This bill sets into place the basic mechanics of regulation, and represents a compromise effort between the leasing industry, government, and the insurance industry. We would like to complement the leasing industry for seeking this legislation, and for being receptive to our ideas on the bill.

We, like the leasing representatives, didn't get everything we wanted in this bill. But we all got a framework for ensuring good business practices which includes licensing, proper disclosure of information to clients and workers, and procedures for dealing with improper practices.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10 2 of 2
DATE Feb 7, 19
BILL NO. SB 26

As with any new industry, it is difficult to know how much regulation is enough. There are areas of the bill, including the provisions about professional employer groups, solvency standards for PEOs and licensing of PEOs from other states, where we may eventually need regulation is excess of what is contained in this bill.

But it is our view that this bill provides the basic foundation needed, and that other problems should be addressed when, and if, they arise. We encourage a do pass recommendation from the committee.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO.
DATE February 7, 1995
BILL NO. 1 of 2

DATE February 7, 1995

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: SB 179 * SB 238 * SB 264

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Don Judge	MT STATE AFL-CIO	SB 179 SB 238	X	
LARS ERICSON	CARPENTERS	SB 238	✓	
Riley Johnson	NFIB	SB 179		✓
Curt Laungen	MT MOTOR CARRIERS ASSN	SB ~~264~~	✓	
Byron McCurdy	National Assoc of Post Emp Orgs	SB 264	✓	
Howard F Hecht	United Staffing Alliance	SB 264	✓	
ROD SAGER	DEPT. LABOR & INDUSTRY	SB 264	✓	
Brad Martin	MT Democratic Party	SB 179		
JIM TUTWILER	MT CHAMBER	SB 179		✓
Ron Van Dist	I.B.E.W	SB 238	✓	
TERRY KEATING	United Staffing of MT	SB 264	✓	
SHARON HOFF	MT CATH CONF	SB 179	✓	
Terry Minow	MFT	SB 179	✓	
CHUCK HUNTER	DEPT OF LABOR	SB 264	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

EXHIBIT NO. _____
DATE Feb 7, 1995
BILL NO. 2 of 2

DATE February 7, 1995
SENATE COMMITTEE ~~ON~~ Labor and Employment Relations
BILLS BEING HEARD TODAY: SB 179 * SB 238 * SB 264

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Robert White	Bozeman Chamber	SB179		✓
Bob Jones	NASW	SB179	✓	
Ed Caplis	MSCA	SB179	✓	
Melissa Case	HERE	SB 179	✓	
Brad Griffin	MT Retail Assoc.	SB 179		✓
Don Judge	MT STATE AFL-CIO	SB264		X/amend

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 9, 1995, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)

Members Excused: Senators excused to present bills in another hearings:
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None

Executive Action:	SB 179	TABLED
	SB 264	DO PASS AS AMENDED
	SB 238	DO PASS AS AMENDED
	SB 85	DO PASS
	SB 201	DO PASS AS AMENDED

{Tape: One; Side: One}

EXECUTIVE ACTION ON SB 179

Motion:

SENATOR WILSON MOVED SB 179 DO PASS

Discussion: None.

Motion/Vote:

SENATOR WILSON MOVED SB 179 DO PASS. The motion **FAILED** with **SENATORS BAER, BENEDICT, BURNETT, EMERSON, AKLESTAD, AND KEATING** voting **NO.**

Motion:

SENATOR BENEDICT moved to TABLE SB 179.

Discussion:

SENATOR BENEDICT stated he did not favor a floor fight on SB 179.

Motion/Vote:

SENATOR BENEDICT moved to TABLE SB 179. The motion PASSED with SENATORS BARTLETT, VAN VALKENBURG, AND WILSON voting NO.

EXECUTIVE ACTION ON 264

Motion:

SENATOR AKLESTAD MOVED SB 264 DO PASS.

Discussion:

Eddye McClure directed the committee's attention to amendment SB 026403.AEM, dated February 7, **(EXHIBIT 1)** On amendment #4, there is a word change. Change the word "strike" to "insert". **SENATOR GAGE** agreed on the amendment 26402.**(EXHIBIT 2)** The amendment was distributed February 7th. The amendment 26403 is the State Fund, Department of Labor and Jacqueline Lenmark's consensus amendment. It was drawn up separately from **SENATOR GAGE's** amendment.

CHAIRMAN KEATING stated consideration will be made on the SB026403.AEM amendments, first.

Motion:

SENATOR BENEDICT moved to AMEND SB 264 (SB026403.AEM)

Discussion:

SENATOR BENEDICT stated the amendments SB026403.AEM were proposed by the State Fund. A consensus group was put together. Agreement was between the **State Fund, private insurers, Terry Keating, and Howard Recht. Eddye McCLure** stated the first amendment was done for internal reference. A new section was added. Number 1 through 14 was replaced by the new 1 through 15. **CHAIRMAN KEATING** stated the first amendment corrects a technical/clerical matter. Number 2 is on page 2, line 6. and

strikes "person" and inserts "professional employer organization (PEO)". "An employee leasing arrangement means a leasing arrangement by contract under which a person hires its own employees and assigns the employees to work at a particular place. The word "person" means an individual company, partnership, corporation, etc.

Number 3 is on Page 4, Lines 21 and 22. **Eddye McClure** stated the amendment was drawn up to address MOD experience factors. It replaces the existing subsection 9. **CHAIRMAN KEATING** instructed committee members to strike section 9, plus the first two lines on page 12. The section is struck and then number 9 is inserted. A professional employer organization that applies for Work Comp coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experienced modification factor for each client, employer, etc. The PEO or client locations cannot "cheat" on the mod factor and obtain Workers' Compensation. On page 15, line 1, a new section is added, which provides Workers' Compensation to a client employer, etc. **CHAIRMAN KEATING** requested **Jacqueline Lenmark** to explain the amendment.

Jacqueline Lenmark, American Insurance Association, stated the new section 15 refers to the old subsection 9, which is related to the insurance company. The first subsection is language, already in the bill. The second is language that was recommended by the NCCI to insure recording integrity between the insurance company and the rating organization. The third section is language, modeled after NAIC's model language. The mechanism is for the insurance company to audit the insurance policies. The purpose is to ensure the mod factor is calculated correctly and the classification is correct. The language is acceptable to the State Fund, AIA, and Mr. Terry Keating.

SENATOR AKLESTAD asked how the first set of amendments affect the fiscal note. **Jacqueline Lenmark** stated the amendment has no adverse impact. The amendments are directed to the relationship between the company and their insurer or the NCCI. The amendment allows the data base to be used to set rates. The fiscal note, if anything, should be improved.

Lawrence Hubbard, State Fund Compensation Insurance, stated the amendment should not affect the fiscal note. The State Fund will notify policy holders about the legislation and the coverage availability.

SENATOR AKLESTAD asked who gets the experience rating. **Jacqueline Lenmark** stated the experience rating stays with the client employer. **SENATOR KEATING** explained the professional employment organization and the client location are co-employers. The PEO will be the employer for purposes of providing Workers' Compensation insurance. However, the modification factor will be applied to the client location. So, the employees of the client location and their experience will affect the modification

factor. Should the client location leave the PEO and go to another carrier for workers compensation, the mod factor goes with the client location.

Motion/Vote:

The motion to amend SB 264, SB026403.AEM, CARRIED UNANIMOUSLY.

Motion/Vote:

SENATOR BENEDICT moved to AMEND SB 264 (SB026401) (EXHIBIT 3).

Eddye McCLure described amendment SB026401.AEM and stated the amendments were drafted by **Mr. Terry Keating.**

CHAIRMAN KEATING pointed the committee's attention to page 1. The definition of the Professional Employment organization is: The PEO assumes the responsibility for payment of employee wages, payroll related taxes, and employee benefits. The amendment inserts between "employees" and "payroll related taxes" the phrase, "Workers' Comp premiums", to specify that the PEO is responsible for the payment of Work Comp premiums. **SENATOR AKLESTAD** asked if there is financial criteria. **CHAIRMAN KEATING** stated the bill requires a $50,000 net worth. A license must be obtained from the department. The unrestricted license cost will be $700. **SENATOR BENEDICT** stated that if the uninsured and underinsured employer fund is still required, the PEO will also pay into that fund. **SENATOR EMERSON** asked if it was possible for the PEO to take over all activities described, but then refuse to pay for the Workers' Compensation. **CHAIRMAN KEATING** stated that under the PEO arrangement, with the client location and under the co-employment arrangement, the PEO is the employer of record, and is required by law to provide Workers' Compensation.

The second amendment is on page 9, line 21 & 22. The committee was instructed to strike the last sentence of small "a", and insert "that the disclosure must provide that the PEO... ." The amendment is a minor language change. **CHAIRMAN KEATING** stated the PEO is an entity, a group is more than one PEO with a single owner. One person could own four PEOs.

Amendment 3 is tricky because section 9 was struck, and a new section 9 was entered. The amendment follows the new section nine, which deals with the operation of a client, as to whether or not all or a portion of the client's operation are subjected to a professional employer organization or an employee leasing arrangement. Both must be insured by the same insurer to make sure the same Workers' Comp carrier is covering all the clients operations. Amendments 4 and 5 are technical replacements. Amendment 14 allows the inspection of records by public employees. Amendment 14, page 15, changes the two title 37's to title 39's. Title 39 is the Department of Labor.

SENATOR BENEDICT stated the prior amendment changes are more technical than substantive. **CHAIRMAN KEATING** stated the "single" insurer is a substantive change.

Vote:

The motion to amend SB 264 CARRIED UNANIMOUSLY.

Discussion:

CHAIRMAN KEATING stated the last amendment is SB026402. On page 10, line 24, the department wants to strike "or group". In doing so, the unemployment insurance department would require separate reports for each client location from the PEO **(EXHIBIT 2)**.

Vote:

The motion to amend SB 264, SB026402, CARRIED UNANIMOUSLY.

SENATOR BENEDICT stated the State Fund requested a conceptual amendment to correct an oversight on the third amendment, just passed. **(SB0264.03.AEM) CHAIRMAN KEATING** told the committee the amendment will strike lines 21 through line 22, page 4.

Motion:

The motion to amend SB 264 CARRIED UNANIMOUSLY. All amendments passed were consolidated into SB026403.AEM dated February 7th **(EXHIBIT 4)**.

Discussion:

SENATOR BARTLETT submitted the AFL-CIO amendment. **SENATOR BARTLETT** stated the amendment pertains to section 10 and ends on page 12. The amendment identifies what practices are prohibited, and adds a new subsection 3. The amendment change adds "as a deceptive practice, the PEO may not enter into an agreement to assign employees to work for a person where there is a labor dispute, involving the person's facility function or enterprise." Obviously, the concern is about PEO's reputations of being in the strike breaking business or otherwise disrupting labor/management relations in difficult circumstances **(EXHIBIT 5)**.

Motion:

SENATOR BARTLETT moved to AMEND SB 264.

Discussion:

SENATOR BENEDICT stated opposition to the amendment. The amendment was not a consensus idea; therefore, in fairness to the absent sponsor, the committee should move the bill to the floor. **SENATOR BARTLETT** may make amendments at that time.

SENATOR EMERSON asked about assigned employees. Can more employees be assigned, or are the employees employed by the business. **SENATOR BENEDICT** stated a PEO brings in employees to work for an employer. **SENATOR BARTLETT** stated the definition on page two explains in detail about a PEO. A PEO can do two things under statute. They can do a professional employer arrangement, which is co-employing. Generally, people, who had been working for a small business, choose to go into a co-employment relationship with a PEO. The business keeps the same employees, or, line 5, they do an employee leasing arrangement, where the employees are employees of the PEO. The PEO assigns the employee to work for another person. They can staff, manage or assist in the staffing and management of a facility, or they can function on an ongoing basis.

CHAIRMAN KEATING told **SENATOR BARTLETT** that her interpretation is correct; however, the client has every right to deny an employee the PEO assigns in the business place. Also, if the client does not like the PEO arrangement, he/she can terminate the contract. The PEO does not necessarily have the final employment say. The employee is the employee of the PEO and a co-employee of the client location. They are under a professional advisory arrangement. The client can, with 30 days notice, cancel the contract and be on their own, and the PEO has no control So, the PEO does not necessarily have distinct control, as **SENATOR BARTLETT** stated. Although **SENATOR BARTLETT'S** interpretation of the language is accurate, the conditions are not that specific. **SENATOR BARTLETT** stated the concept may be correct in the professional employer arrangement, as defined in the bill, but a PEO can also enter into employee leasing arrangements. The employee leasing arrangement is a different set up. The PEO could, in fact, assign it's own employees to another employer's work place for a specific function.

Vote:

The motion has been made. It has been moved that the underlined language number 3, be amended into SB 264.

A roll call vote was taken with SENATORS BAER, BENEDICT, BURNETT, EMERSON, AKLESTAD, AND KEATING voting NO. SENATORS BARTLETT, WILSON, AND VAN VALKENBURG voting YES. The motion to amend SB 264 FAILED.

Motion:

CHAIRMAN TOM KEATING moved SB 264 DO PASS AS AMENDED.

Discussion:

SENATOR AKLESTAD requested a clarification on page 4, lines 21 and 22, concerning the conceptual amendment. Since section 9 was taken out of the bill, how are the recording and financial requirements satisfied. **Jacqueline Lenmark** stated the new

language in the old section and the revised language in section 9 takes care of all the recording requirements. If this language remained in the bill, it would conflict with the new section adopted in the earlier amendment. **Jacqueline Lenmark** offered an apology, since the groups had agreed previously on this amendment. **SENATOR AKLESTAD** asked how the amendment impacts the bill. **Chuck Hunter, Administrator, Employment Relations Division, Labor and Industry**, stated there is no fiscal impact, whatsoever. **Mr. Hubbard** expressed agreement.

The DO PASS AS AMENDED motion for SB 264 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 238

Motion:

SENATOR FRED VAN VALKENBURG moved SB 238 DO PASS.

Discussion:

CHAIRMAN KEATING stated the committee has moved the bill and then has taken up the amendments.

Motion:

SENATOR FRED VAN VALKENBURG moved to AMEND SB 238 (EXHIBIT 5).

Discussion:

SENATOR VAN VALKENBURG explained the amendment was suggested by the Commissioner of Higher Education's office to ensure the alternative benefit package cannot exceed the cost of the permanent employee state benefits.

SENATOR AKLESTAD asked if the temporary employees would have the latitude to negotiate. **SENATOR VAN VALKENBURG** answered yes.

SENATOR EMERSON questioned if 3 and 4 are the same. **SENATOR VAN VALKENBURG** stated the amendment deals with issues of retirement and codification, according to title 19. The benefit package negotiated cannot exceed what the individual would be entitled to under PERS.

SENATOR AKLESTAD asked why are labor organizations put into the bill. **Ms. McClure** offered the title identifies collective bargaining. **SENATOR VAN VALKENBURG** stated an individual person cannot negotiate. The negotiations take place between a collective bargaining agent and the university system, rather than John Doe and the university system. **CHAIRMAN KEATING** stated the essence of the bill is about the bargaining unit for temporary work, concerning university negotiating benefits. This would not preclude an individual from negotiating the best terms

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE FEBRUARY 9, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	X		
SUE BARTLETT	X		
STEVE BENEDICT	X		
JIM BURNETT	X		
CASEY EMERSON	X		
FRED VAN VALKENBURG			X
BILL WILSON			X
GARY AKLESTAD, VICE CHAIRMAN	X		
TOM KEATING, CHAIRMAN	X		

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CS-09

SENATE STANDING COMMITTEE REPORT

February 9, 1995

MR. PRESIDENT:
We, your committee on Labor and Employment Relations having had under consideration SB 264 (first reading copy -- white), respectfully report that SB 264 be amended as follows and as so amended do pass.

Signed: _____
Senator Thomas F. Keating, Chair

That such amendments read:

1. Page 1, lines 20, 26, and 28.
Page 2, line 10.
Page 3, lines 13, 14, 16, 18, 25 and 28.
Page 6, line 17.
Page 7, line 17.
Page 8, lines 6, 10, 15, and 19.
Page 11, lines 23 and 24.
Page 12, line 11.
Page 13, lines 25, 26, 27, and 28.
Page 14, lines 3, 4, and 22.
Page 15, lines 1 and 2.
Strike: "14"
Insert: "15"

2. Page 2, line 6.
Following: "a"
Strike: "person"
Insert: "professional employer organization"

3. Page 4, lines 21 and 22
Following: line 20.
Strike: line 21 and 22 in their entirety

4. Page 9, line 9.
Following: "employees,"
Insert: "workers' compensation premiums,"

5. Page 9, lines 21 and 22.
Following: "work." on line 21
Strike: remainder of line 21 through "group" on line 22
Insert: "The disclosure must provide that the professional employer organization"

6. Page 10, line 24.
Following: "organization"
Strike: "or group"

Amd. Coord.
Sec. of Senate

7. Page 10, line 25.
Following: line 26
Insert: ","
Following: "39-51-201"
Insert: ", and shall keep separate records and submit quarterly wage lists for each of its clients"

8. Page 11, line 27 through page 12, line 2.
Strike: subsection (9) in its entirety
Insert: "(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:
(a) the client employer's corporate or business name;
(b) the client employer's taxpayer or employer identification number;
(c) the client employer's risk identification number;
(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and
(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer."

Renumber: subsequent subsections

9. Page 12, line 5.
Strike: "and employers' liability"

10. Page 12, line 8.
Strike: "or employers' liability"

11. Page 12, lines 13 through 15.
Following: "(12)"
Strike: remainder of line 13 through "individual" on line 15
Insert: "A sole proprietor or a working member of a partnership"

12. Page 14, line 9.
Following: "confidential"
Strike: remainder of line 9 through "disclosure"
Insert: "and may not be published or be open to public inspection, except to public employees in the performance of their public duties"

13. Page 14, line 14.
Strike: "state" through "duties"
Insert: "public employees in the performance of their public

duties"

14. Page 15, line 1.
Insert: "NEW SECTION. **Section 15. Workers' compensation insurer requirements.** (1) An insurer that provides workers' compensation insurance to a client employer of a professional employer organization shall base classifications and rates applicable to the payroll of a worker who is subject to either a professional employer arrangement or an employee leasing arrangement as though the worker has been a direct employee of the client employer. If an experience modification has been established for the client employer, that experience modification must be audited using the factors in subsection (3) and must be applied by the insurer to the premium for the client employer's workers.

(2) The insurer of a professional employer organization shall report to the workers' compensation advisory organization all data by client, including payroll by classification and liabilities for each client during the term of the policy.

(3) An insurer shall audit policies issued to a professional employer organization within 90 days of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to determine whether all classifications, experience modification factors, and estimated payroll used with respect to the development of the premium charged are appropriate.

(4) All operations of a client, whether or not all or a portion of the client's operations are subject to a professional employer arrangement or employee leasing arrangement, must be insured by the same insurer."

Renumber: subsequent sections.

15. Page 15, line 2.
Strike: "37" in two places
Insert: "39" in two places

-END-

EXHIBIT NO. _____
DATE February 9, 1
BILL NO. SB 264

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
ROLL CALL VOTE

DATE February 9, 1995 BILL NO. SB 264 NUMBER #2

MOTION: Accept AFL-CIO Amendments offered by Senator Sue Bartlett

NAME	AYE	NO
LARRY BAER		X
SUE BARTLETT	X	
STEVE BENEDICT		X
JIM BURNETT		X
CASEY EMERSON		X
FRED VAN VALKENBURG	X	
BILL WILSON	X	
GARY AKLESTAD, VICE CHAIRMAN		X
TOM KEATING, CHAIRMAN		X

SEN:1995
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SENATE LABOR & EMPLOYMENT
EXHIBIT NO. # 1
DATE February 2, 1995
BILL NO. SB 264

Amendments to Senate Bill No. 264
First Reading Copy

Requested by Senator Keating
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 9, 1995

1. Page 1, lines 20 and 26.
Page 2, line 9.
Page 3, lines 14, 16, 18, 25 and 28.
Page 7, line 17.
Page 8, lines 6, 10, and 19.
Page 11, lines 23 and 24.
Page 12, line 11.
Page 13, lines 25, 26, and 27.
Page 14, lines 3 and 22.
Page 15, lines 1 and 2.
Strike: "14"
Insert: "15"

2. Page 2, line 6.
Following: "a"
Strike: "person"
Insert: "professional employer organization"

3. Page 11, line 27 through page 12, line 2.
Strike: subsection (9) in its entirety
Insert: "(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:
(a) the client employer's corporate or business name;
(b) the client employer's taxpayer or employer identification number;
(c) the client employer's risk identification number;
(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and
(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer."

Renumber: subsequent subsections

4. Page 15, line 1.
Strike: "NEW SECTION. Section 15. Workers' compensation insurer requirements. (1) An insurer that provides workers' compensation insurance to a client employer of a professional employer organization shall base classifications and rates applicable to the payroll of a

worker who is subject to either a professional employer arrangement or an employee leasing arrangement as though the worker has been a direct employee of the client employer. If an experience modification has been established for the client employer, that experience modification must be audited using the factors in subsection (3) and must be applied by the insurer to the premium for the client employer's workers.

(2) The insurer of a professional employer organization shall report to the workers' compensation advisory organization all data by client, including payroll by classification and liabilities for each client during the term of the policy.

(3) An insurer shall audit policies issued to a professional employer organization within 90 days of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to determine whether all classifications, experience modification factors, and estimated payroll used with respect to the development of the premium charged are appropriate."

Renumber: subsequent sections

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #2
DATE February 2, 1995
BILL NO. SB 264

Amendments to Senate Bill No. 264
First Reading Copy

Requested by Senator GAGE
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 7, 1995

1. Page 10, line 24.
Following: "organization"
Strike: "or group"

2. Page 10, line 25.
Following: line 26
Insert: ","
Following: "39-51-201"
Insert: ", and shall keep separate records and submit quarterly wage lists for each of its clients"

SEN. LABOR & EMPLOYMENT
EXHIBIT NO. #3
DATE February 2, 1995
BILL NO. SB 264

Amendments to Senate Bill No. 264
First Reading Copy

Requested by Senator Gage
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 4, 1995

1. Page 9, line 9.
Following: "employees,"
Insert: "workers' compensation premiums,"

2. Page 9, lines 21 and 22.
Following: "work."
Strike: reminder of line 21 through "group" on line 22
Insert: "The disclosure must provide that the professional employer organization"

3. Page 12, line 2.
Following: "workers."
Insert: "All operations of a client, whether or not all or a portion of the client's operations are subject to a professional employer arrangement or employee leasing arrangement, must be insured by the same insurer."

4. Page 12, line 5.
Strike: "and employers' liability"

5. Page 12, line 8.
Strike: "or employers' liability"

6. Page 12, lines 13 through 15.
Following: "(12)"
Strike: remainder of line 12 through "individual" on line 15
Insert: "A sole proprietor or a working member of a partnership"

7. Page 14, line 9.
Following: "confidential"
Strike: remainder of line 9 through "disclosure"
Insert: "and may not be published or be open to public inspection, except to public employees in the performance of their public duties"

8. Page 14, line 14.
Strike: "state" through "duties"
Insert: "public employees in the performance of their public duties"

9. Page 15, line 2.
Strike: "37" in two places
Insert: "39" in two places

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. # 1
DATE FEB 7, 1995
BILL NO. SB 264

Amendments to Senate Bill No. 264
First Reading Copy

Requested by Senator Keating
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 9, 1995

1. Page 1, lines 20, 26, and 28.
Page 2, line 10.
Page 3, lines 13, 14, 16, 18, 25 and 28.
Page 6, line 17.
Page 7, line 17.
Page 8, lines 6, 10, 15, and 19.
Page 11, lines 23 and 24.
Page 12, line 11.
Page 13, lines 25, 26, 27, and 28.
Page 14, lines 3, 4, and 22.
Page 15, lines 1 and 2.
Strike: "14"
Insert: "15"

2. Page 2, line 6.
Following: "a"
Strike: "person"
Insert: "professional employer organization"

3. Page 4, lines 21 and 22
Following: line 20.
Strike: line 21 and 22 in their entirety

4. Page 9, line 9.
Following: "employees,"
Insert: "workers' compensation premiums,"

5. Page 9, lines 21 and 22.
Following: "work." on line 21
Strike: remainder of line 21 through "group" on line 22
Insert: "The disclosure must provide that the professional employer organization"

6. Page 10, line 24.
Following: "organization"
Strike: "or group"

7. Page 10, line 25.
Following: line 26
Insert: ","
Following: "39-51-201"
Insert: ", and shall keep separate records and submit quarterly wage lists for each of its clients"

8. Page 11, line 27 through page 12, line 2.

Strike: subsection (9) in its entirety
Insert: "(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:
(a) the client employer's corporate or business name;
(b) the client employer's taxpayer or employer identification number;
(c) the client employer's risk identification number;
(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and
(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer."

Renumber: subsequent subsections

9. Page 12, line 5.
Strike: "and employers' liability"

10. Page 12, line 8.
Strike: "or employers' liability"

11. Page 12, lines 13 through 15.
Following: "(12)"
Strike: remainder of line 13 through "individual" on line 15
Insert: "A sole proprietor or a working member of a partnership"

12. Page 14, line 9.
Following: "confidential"
Strike: remainder of line 9 through "disclosure"
Insert: "and may not be published or be open to public inspection, except to public employees in the performance of their public duties"

13. Page 14, line 14.
Strike: "state" through "duties"
Insert: "public employees in the performance of their public duties"

14. Page 15, line 1.
Insert: "NEW SECTION. **Section 15. Workers' compensation insurer requirements.** (1) An insurer that provides workers' compensation insurance to a client employer of a professional employer organization shall base classifications and rates applicable to the payroll of a worker who is subject to either a professional employer arrangement or an employee leasing arrangement as though the worker has been a direct employee of the client employer. If an experience modification has been established for the client employer, that experience modification must be audited using the factors in subsection (3) and must be applied by the insurer to the premium for the client

EXHIBIT 4
DATE 2-7-95
SB 264

employer's workers.

(2) The insurer of a professional employer organization shall report to the workers' compensation advisory organization all data by client, including payroll by classification and liabilities for each client during the term of the policy.

(3) An insurer shall audit policies issued to a professional employer organization within 90 days of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to determine whether all classifications, experience modification factors, and estimated payroll used with respect to the development of the premium charged are appropriate.

(4) All operations of a client, whether or not all or a portion of the client's operations are subject to a professional employer arrangement or employee leasing arrangement, must be insured by the same insurer."

Renumber: subsequent sections.

15. Page 15, line 2.
Strike: "37" in two places
Insert: "39" in two places

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 9, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 253, SB 317. SB 264
Executive Action:	SB 253, SB 317, SB 374 (suspended), SB 224

Motion/Vote: Motion carried 17-1 with REP. ELLINGSON voting no.

HEARING ON SB 264

Opening Statement by Sponsor:

REP. DELWYN GAGE, SD 43, Glacier County, said this bill was an act establishing the Montana Professional Employer Organizations Licensing Act; requiring licensing of and standards for professional employer organizations and groups; requiring professional employer organizations and groups to provide Workers' Compensation and unemployment insurance coverage; providing for disclosure of information and providing exemptions and penalties.

Proponents' Testimony:

Howard Recht, Attorney, said this bill is intended to provide a licensing registration and a definition package to add to the Montana Code for the purpose of addressing this particular industry. As it stands now, there is essentially no legislation in Montana which addresses this industry. There are many state agencies that need to deal with this industry but they have no regulations in place because there are no statutes. He said there were amendments proposed which he opposed.

TAPE 1, SIDE B

Byron G. McCurdy, National Association of Professional Employees, said this is model legislation which has been altered to fit Montana law. Appropriate agencies have been approached and changes have been made to make this acceptable. It is needed to define the interaction between PEOs and various state agencies and it will effectively do that. It is also needed to keep bad players out of this state. These are players who may come in with no Workers' Compensation insurance coverage or would be misclassified or that may not pay taxes or health benefits on emplyees. This legislation will protect the employees and employers of the state where no protection exists today.

Jim Tutweiler, Montana Chamber of Commerce, said this bill typifies opportunities and responsibilities for organizations like theirs.

Terry Keating, President, United Staffing of Montana, Inc., said over 80% of the employers in Montana employ fewer than ten people. Their company relieves small employers of the administrative burdens and provide full-blown human resources support.

Dennis Zieler, Department of Labor and Industry, said they supported this bill. They have been meeting with industry representatives for some time to bring some clarity and

definition to this emerging industry. They realized the need for basic regulation to mutually protect workers, employers and the leasing industry. This bill sets in place the basic mechanics for regulation of this industry and represents a compromise between the leasing industry, government and insurance industry.

Jacqueline Lenmark, American Insurance Association, said they supported this bill and indicated technical amendments would be required.

Lawrence Hubbard, State Compensation Insurance Fund, said the State Fund does concur with the legislation and rises in support of the bill. It is time that it moved forward and with the amendments which were heard in the third reading in the Senate and the additional amendment, they still support the bill.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, said they opposed this bill. They are not rising to oppose the change in the marketplace. They indicate when change occurs some things fall by the wayside. Workers' Compensation has a functional concept and is one of the victims of the change. This bill does two different things. It directly and fundamentally changes the exclusive remedy protection in Montana for employers. There is also a blanket immunity for the entities.

Keith DeWitt, said he was an insurance agent from Missoula and opposed the bill as written. They opposed the dual exclusive remedy. He also provided testimony from United Staffing. **EXHIBIT 2**

Roger McGlenn, Executive Director, Independent Insurance Agents' Association of Montana, provided written testimony. **EXHIBIT 3**

Larry Akey, Montana Association of Life Underwriters, stated their opposition to this bill.

TAPE 2, SIDE A

Technical Testimony:

Frank Coty, Deputy Insurance Commissioner, presented amendments from the State Auditor's Office. **EXHIBIT 4**

Questions From Committee Members and Responses:

REP. EWER asked for comments on the profound implication on a host of the issues regarding employers and employees. **Mr. Zieler** said they did not know how much regulation was enough for this new emerging industry.

REP. ELLIS asked if her department had seen the amendments. **Ms. Lenmark** said she had just seen them.

REP. MCKEE asked for his response to **Mr. McGlenn's** concerns. **Mr. Recht** said there has been a question raised as to whether or not a particular company in this industry may have been misleading in what they were doing. There is a section in this legislation which makes deceptive practices prohibitive. This bill gives some regulation to the state to prevent someone from misleading potential clients as to what is really done in the industry.

REP. CHARLES DEVANEY said somewhere in the bill it excludes any other insurance purchases or arrangements such as insurance on assets, or liability insurance on the new clients. He asked if that was a correct assumption. **Mr. Lenmark** said the bill treats Workers' Compensation insurance in one manner and in another part of the bill it talks about the sorts of coverage that a professional employer organization might want to purchase.

REP. PAVLOVICH asked if he had looked at the amendments. **Mr. Hill** said the amendments the Senate addressed is the language that he was concerned about. The amendments do not address the language either.

REP. COCCHIARELLA suggested this bill be put in a sub-committee because this is the same bill which was endorsed in the interim committee regarding exclusive remedy. **Mr. Hubbard** said the State Fund, in their comments to the Senate raised some concern. Some regulation of this industry, minimum requirements for compliance with the needs of insurance underwriter for Workers' Compensation purposes, have been included in this legislation. That does not mean this legislation is perfect. There are concerns as insurance carriers of last resort who will likely be the agency to receive all the ill benefits of this legislation.

CHAIRMAN SIMON said **REP. COCCHIARELLA** should supply the reports to the committee.

REP. ELLINGSON asked what the economic forces are that are driving the creation of this new kind of relationship. Why can't employers get their employees through the PEO. **Mr. Recht** said it was not economics that yhe caused industry to come into being and expand. It is originally that small businesses were so burdened trying to provide all of the things that state and federal governments imposed upon them.

CHAIRMAN SIMON said in **Mr. DeWitt's** testimony and the information which was provided to the committee, does an employer sell insurance if he encourages an employee to work for his company because they have insurance. **Mr. DeWitt** said no, because in the bill they are listed as sole employers for Workers' Compensation purposes. The client employer is individually identified.

CHAIRMAN SIMON said she was trying to get information on the sales relationship. **Mr. DeWitt** said the employee does not pay for the benefits, the employer pays. This is done to attract

employees. These employees are going to a Montana employer and suggesting the employee come with them because there is a savings. It is the Montana employer who is still paying that premium. His business is generating that premium to pay for the insurance. There is gross mis-representation in the proposal. That company is going out and soliciting to the employer who is paying the premium.

Closing by Sponsor:

The sponsor closed.

TAPE 2, SIDE B

EXECUTIVE ACTION ON SB 317

Motion: **REP. MILLS MOVED SB 317 BE CONCURRED IN.**

Discussion:

REP. JACK HERRON asked if there should be a definition.

CHAIRMAN SIMON said his concern was alleviated when engineer and teacher was struck out.

Vote: **Motion carried 18-0.**

EXECUTIVE ACTION ON SB 374

Motion/Vote: **REP. DEVANEY MOVED SB 374 BE CONCURRED IN. REP. MCKEE MOVED THE #1 MCKEE AMENDMENTS. Motion carried to adopt the McKee amendments 18-0.**

Motion: **REP. MCKEE MOVED THE #2 MCKEE AMENDMENT.**

Discussion:

REP. EWER said he opposed the amendment. It would strike the responsibility to provide services for the public sector. The State Fund is not on a level playing field with the private sector. The private sector can choose to offer whatever services it wants. They are "creaming off" the best and most cost-effective customers. The State Fund does have some advantage. They don't pay taxes.

CHAIRMAN SIMON said he was speaking in favor of the amendment and against what **REP. EWER** is speaking to. The State Fund is behind the curve in trying to get caught up. This particular additional ability is something that will not be pursued. They should get their claims management in order.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL DATE 3-9-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

EXHIBIT
DATE 3-9-95
HB SB 264

DATE: Janury 19, 1995

TO:

FROM: Ken Ulland

RE: Quote

Current		US Proposed	
Payroll	100.00	Payroll	100.00
FICA	7.65	FICA	7.65
FUI	.80	FUI	.80
SUI	6.50	SUI	6.50
WC:		W/C:	
2702	45.83	2702	32.37
2727	25.00	2727	17.75
7219	24.44	7219	15.00
8810	.55	8810	.42
Non-Prod.	2.00	Fee	3.00

	2702	2727	7219	8810
Total Current	162.78	141.95	139.39	117.50
Total Proposed	150.32	135.70	132.95	118.37
Net Difference	12.46	6.25	6.44	(.87)

Summary Based on 9/1/94-9/30/94-Monthly Payroll Report

NCCI Code	2702	2727	7219	8810
Gross Pay Monthly	$ 8,627.00	$4,879.18	$ 330.00	$ 3,000
Times 12 months	x 12	x 12	x 12	x 12
	$103,524.00	$58,550.16	$ 3,960.00	$36,000
Times Net Difference	x 12.46%	x 6.25%	x 6.44%	x .87%
	$12,899.09	$3,659.39	$ 255.02	($313.20)

Total Savings $16,500.30

HEALTH PLAN

	Blue Sheild	US Plan A
Premium	$783.20	$655.00
Deductible	$500.00	$200.00
Dental -Single	$ 23.15	$ 18.00
Ind. & Spouse	$ 33.15	$ 32.00
Family	$ 43.29	$ 47.00
Life	-0-	$10,000.00
Script Card	Yes	Yes

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503-531-3300 • 800-320-2242 • FAX 503-690-6776

WORKERS COMPENSATION RATE COMPARISON

CODE	CLASS	NCCI RATE	FIREMANS FUND RATE
2702	LOGGING	91.77	32.37
2727	LOG HAULING	43.98	17.17
7219	TRUCKING	43.44	15.00
8810	CLERICAL	.92	.42

EXH 2 3-9-95 SB 264

ACORD CERTIFICATE OF INSURANCE

DATE (MM/DD/YY) 1/25/95

PRODUCER
DuBarrow Group, Ltd.
636 Exchange Place Suite 300
Lilburn, GA 30245
(404) 931-7652

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A: Fireman's Fund Insurance Company

INSURED
United Staffing Of America
1100 N. W. Compton Drive #308
Beaverton, OR 97006
(503) 531-3300

COMPANY B:

COMPANY C:

COMPANY D:

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY				GENERAL AGGREGATE	$XXXXXXXXXX
	COMMERCIAL GENERAL LIABILITY	XXXXXXXXXXXXXXX	/ /	/ /	PRODUCTS - COMP/OP AGG	$XXXXXXXXXX
	CLAIMS MADE OCCUR				PERSONAL & ADV INJURY	$XXXXXXXXXX
	OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	$XXXXXXXXXX
	XXXXXXXXXXXXXXX				FIRE DAMAGE (Any one fire)	$XXXXXXXXXX
					MED EXP (Any one person)	$XXXXXXXXX
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT	$XXXXXXXXX
	ANY AUTO	XXXXXXXXXXXXXXX	/ /	/ /	BODILY INJURY (Per person)	$XXXXXXXXX
	ALL OWNED AUTOS				BODILY INJURY (Per accident)	$XXXXXXXXX
	SCHEDULED AUTOS				PROPERTY DAMAGE	$XXXXXXXXX
	HIRED AUTOS					
	NON-OWNED AUTOS					
	XXXXXXXXXXXXXXX					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$XXXXXXXXX
	ANY AUTO	XXXXXXXXXXXXXXX	/ /	/ /	OTHER THAN AUTO ONLY:	
	XXXXXXXXXXXXXXX				EACH ACCIDENT	$XXXXXXXXX
					AGGREGATE	$XXXXXXXXX
	EXCESS LIABILITY				EACH OCCURRENCE	$XXXXXXXXX
	UMBRELLA FORM	XXXXXXXXXXXXXXX	/ /	/ /	AGGREGATE	$XXXXXXXXX
	OTHER THAN UMBRELLA FORM				XXXXXXXXXXXXX	$XXXXXXXXX
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WP80653070	09/30/94	03/01/95	X STATUTORY LIMITS	
	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: X INCL / EXCL				EACH ACCIDENT	$1,000,000
					DISEASE - POLICY LIMIT	$1,000,000
					DISEASE - EACH EMPLOYEE	$1,000,000
	OTHER					
	XXXXXXXXXXXXXXX	XXXXXXXXXXXXXXX	/ /	/ /	XXXXXXXXXXXXX	XXXXXXXXX
	XXXXXXXXXXXXXXX				XXXXXXXXXXXXX	XXXXXXXXX
	XXXXXXXXXXXXXXX				XXXXXXXXXXXXX	XXXXXXXXX

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Coverage is Extended to:

Highway 2 East 59901

CERTIFICATE HOLDER

Highway 2 East
Kalispell, MT 59901

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

039

© ACORD CORPORATION 1993

DATE: Janury 19, 1995

TO:

FROM: Ken Ulland

RE: Quote

IGNORED EXPERIENC MOD. FACTOR OF .81
IGNORED PREMIUM DISCOUNT FACTOR

Current:	
Payroll	100.00
FICA	7.65
FUI	.80
SUI	6.50

US Proposed	
Payroll	100.00
FICA	7.65
FUI	.80
SUI	6.50

CORRECT RATES

WC:			WC:	
2702	45.83	43.07	2702	32.37
2727	25.00	22.83	2727	17.75
7219	24.44	22.84	7219	15.00
8810	.55	.54	8810	.42
Non-Prod.	2.00		Fee	3.00

THIS A 1TH

	2702	2727	7219	8810
Total Current	162.78	141.95	139.39	117.50
Total Proposed	150.32	135.70	132.95	118.37
Net Difference	12.46	6.25	6.44	(.87)

Summary Based on 9/1/94-9/30/94-Monthly Payroll Report → INFLATED ANNUAL PAYROLL BY $38,000

NCCI Code	2702	2727	7219	8810
Gross Pay Monthly	$ 8,627.00	$4,879.18	$ 330.00	$ 3,000
Times 12 months	x 12	x 12	x 12	x 12
	$103,524.00	$58,550.16	$ 3,960.00	$36,000
Times Net Difference	x 12.46%	x 6.25%	x 6.44%	x .87%
	$12,899.09	$3,659.39	$ 255.02	($313.20)

Total Savings $16,500.30 ← INFLATED BY $13,500

HEALTH PLAN

	Blue Sheild	US Plan A
Premium	$783.20	$655.00
Deductible	$500.00	$200.00
Dental -Single	$ 23.15	$ 18.00
Ind. & Spouse	$ 33.15	$ 32.00
Family	$ 43.29	$ 47.00
Life	-0-	$10,000.00
Script Card	Yes	Yes

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EXHIBIT 2
DATE 3-9-95
SB 264

CURRENT RATES

CODE	CLASS	PAYROLL	RATE	PREMIUM
2702	Logging	$ 66,543	43.07	28,660
2727	Log Hauling	$ 41,397	22.83	9,451
2719	Trucking	$ 16,217	22.84	3,704
8810	Clerical	$ 40,174	.54	217
TOTALS		$164,331		41,732

EXPERIENCE MODIFICATION	.81
MODIFIED PREMIUM	33,803
PREMIUM DISCOUNT	1,008
ESTIMATED ANNUAL PREMIUM	$32,795

UNITED STAFFING RATES

CODE	CLASS	PAYROLL	RATE	PREMIUM
2702	Logging	$ 66,543	32.37	21,540
2727	Log Hauling	41,397	17.75	7,348
7219	Trucking	16,217	15.00	2,433
8810	Clerical	40,174	.42	169
TOTAL		$164,331		31,490

EXPERIENCE MODIFICATION	.81
MODIFIED PREMIUM	$25,507
PREMIUM DISCOUNT	718
ESTIMATED ANNUAL PREMIUM	$24,789
ADD 3% PAYROLL FEE	4,930
TOTAL UNITED STAFFING COST	$29,719

EXHIBIT 3
DATE 3-9-95
~~HB~~ SB 264

9 March 1994

TESTIMONY BEFORE THE HOUSE BUSINESS AND LABOR COMMITTEE

Presented by: Roger McGlenn, Independent Insurance Agents' Association of Montana, Executive Director, phone (406) 442-9555

The Independent Insurance Agents' Association of Montana must stand in opposition to Senate Bill 264 for several reasons. We urge the committee to either amend SB-264 or give this bill a do-not-concur-in recommendation.

Professional Employer Organizations maintain that they are not engaged in the sale of insurance to their clients, (Montana businesses). In Section 9 (11), page 12 line 28, the bill states that "the sale of professional employer services pursuant to (sections 1 through 15) does not constitute the sale of insurance under Title 33", MCA. We disagree, we feel that the sales presentation made by these organizations to a significant degree includes the sale of insurance and the explanation of insurance coverages and rates.

Under 33-17-103,(9) MCA, the definition of insurance producer means, (i) "a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:" (A) "policies of insurance for risks residing, located, or to be performed in this state;...". We believe that the activities of Professional Employer Organizations, (PEOs), at least in regard to workers' compensation and health insurance, PEOs, in their presentations to Montana businesses, meet this definition in several areas. For example PEOs solicit the business to the extent they will be providing insurance coverages as part of their services offered and payed for by the client; it is our understanding that PEOs negotiates these coverages; they procure the insurance coverages on behalf of their clients, in many cases they could be involved in delivering the policies, certificates of coverage, or providing proof of insurance; and this bill certainly relates to "risks residing, located, or to be performed in" Montana.

Our association believes that the PEOs are engaged in the business of insurance and should be regulated under Title 33 as any other business engaged in providing insurance coverages. Along this line, it came to our attention that one PEO operating in Montana was providing workers' compensation through a Fireman's Fund Insurance Company policy. Fireman's Fund was issuing the policy but a major portion of the coverage was being born by another company. We were informed that this company, named Waterford Limited, was owned in-whole or in-part by PEOs. I asked Mr. Terry Keating if this information was accurate. His response was that it was correct. However, he did not

know how much ownership was actually involved.

Insurance coverages and responsibilities are mentioned in several areas of this bill. For workers' compensation the bill extends protection of the exclusive remedy law to both the PEO and the client. In other sections, responsibility for insurance coverages fall solely on the client. Independent insurance agents are experiencing the fact of several insurance companies that are reluctant or refuse to provide other coverages, such as those mentioned in Section 9 subsection (10) on page 12 of this bill. The concerns of these insurance companies are the potential for increased exposure and judicial interpretation of exposures to a business that has entered into an arrangement with a PEO. This concern by insurance companies has had the affect of limiting insurance markets and options for Montana businesses.

This bill raises several legal and insurance coverage questions. We believe that the potential for gaps in coverages for one or both parties in a PEO arrangement exists. As an example, Section 9 subsection (10) states that a client of a PEO or group is considered the employee of the client for a number of insurance coverages. We understand that PEOs would enter into an arrangement with professional offices like doctors, dentists, lawyers, etc. No where in subsection (10) is professional liability listed, so what would happen in a malpractice case? Maybe this is intended to be protected under the hold harmless portion of the bill, Section 9 subsection (8) (ii) starting on page 11 line 27. We believe this is a valid concern and question.

In closing, the Independent Insurance Agents' Association of Montana requests that the House Business and Labor Committee at the very least amend the bill as proposed or vote to do-not-concur-in Senate Bill 264.

Thank You

Respectfully submitted by: Roger McGlenn

EXHIBIT 4
DATE 3-9-95
~~HB~~ SB 264

Amendments to Senate Bill No. 264
Third Reading Copy

Requested by Senator Gage
For the House Committee on Business and Labor

Prepared by Eddye McClure
March 3, 1995

1. Page 16, line 2.
Following: "ADVISORY"
Insert: "or rating"
Following: "ORGANIZATION"
Insert: "of which the insurer is required to be a member under Title 33, chapter 16, part 10,"

Amendments to Senate Bill No. 264
Third Reading Copy

Requested by Senator Gage
For the House Committee on Business and Labor

Prepared by Eddye McClure
March 3, 1995

1. Page 16, line 2.
Following: "ADVISORY"
Insert: "or rating"
Following: "ORGANIZATION"
Insert: "of which the insurer is required to be a member under Title 33, chapter 16, part 10,"

EXHIBIT 4
DATE 3-9-95
SB 264

State Auditor Amendments to SB 264

1. Page 12, line 28.
Following "15)"
Insert: ", to the extent that the professional employer organization or group does not undertake to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies and does not solicit, negotiate, effect, procure, deliver, renew, continue or bind policies of insurance for risks,"

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor DATE 3-9-95

BILL NO. SB 264 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRI

NAME AND ADDRESS	REPRESENTING	Support	Oppos
Jim Tutwiler	MT Chamber	SB264 ✓	
Roger McGlenn	IIAM		✓
Peter C. McNeil Jr.	Western States Insurance		✓
Larry Akey	MT Assoc of Life Underwriters		✓ w/Am
Howard F. Recht	United Staffing Alliance	✓	
Byron G. McCurdy	National Assoc of Prof Emp Org	✓	
Teacher T Keating	United Staffing of MT	✓	
Russell B Hill	MT Trial Lawyers Assn		✓
Frank Cote	St. Aux of Pol		
Laurence Hubbard	State Fund	✓	
Jacqueline Lenmark	Am. Ins. Assoc	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 14, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 246, SB 311, SB 350, SB 298,
Executive Action: SB 246, SB 298, SB 335, SB 224, SB 264

HEARING ON SB 246

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, Lake County, said this bill is an act providing for the issuance of an administrative warrant directing the pawnbroker to hold property for 30 days; providing for a

REP. LARSON said that the amendment does not require the statutory broker to make an investigation. That information is achieved by asking both parties the question.

REP. DEVANEY said the statutory broker does not actually need to go out and physically inspect the property. He can rely on what the two parties agree upon.

Vote: **Motion carried to adopt the #4 Mills amendment. Motion carried 18-0.**

Motion: **REP. LARSON MOVED THE LARSON AMENDMENT.**

Discussion:

REP. MILLS said if a commercial institution has its own real estate department and has gone out and decided to buy a piece of property and there is a complete meeting of the minds, law requires them to use an agent of the state. That agent, who does not know anything about the property, should not be obligated to ascertain the facts because the buyers already have the facts.

REP. ELLINGSON suggested that the first four words of the amendment be struck to indicate that the licensee must endeavor to ascertain all pertinent facts consistent with his role as either seller's agent, broker's agent or statutory agent concerning each property in the transaction.

Motion/Vote: **REP. LARSON MOVED A SUBSTITUTE MOTION TO REVISE HIS PREVIOUS MOTION USING THE ELLINGSON LANGUAGE. Motion carried to adopt the Larson substitute amendment 18-0.**

Motion/Vote: **REP. MILLS MOVED SB 224 BE CONCURRED IN AS AMENDED. Motion carried 18-0.**

EXECUTIVE ACTION ON SB 264

Motion/Vote: **REP. COCCHIARELLA MOVED SB 264 BE CONCURRED IN. REP. COCCHIARELLA MOVED THE #1 COCCHIARELLA AMENDMENT. Motion carried to adopt the #1 Cocchiarella amendment 18-0.**

Motion/Vote: **REP. COCCHIARELLA MOVED THE #2 COCCHIARELLA AMENDMENT. Motion carried to adopt the #2 Cocchiarella amendment 18-0.**

Motion/Vote: **REP. MILLS MOVED THE STATE AUDITOR'S AMENDMENT. Motion carried to adopt the State Auditor's amendments 18-0.**

Motion: **REP. EWER MOVED THE EWER AMENDMENT.**

Discussion:

REP. EWER explained his amendment.

REP. ELLIS asked if the amendment had been shared with the proposers of this bill. **REP. ELLIS** said he opposes the amendment.

CHAIRMAN SIMON said there had been a change made in Workers' Compensation where there is payment in advance. There is not as much of a problem in today's market as there once had been.

Vote: **Motion carried to adopt the Ewer amendment 18-0.**

Motion: **REP. TUSS MOVED THE #1 TUSS AMENDMENT.**

Discussion:

REP. BARNETT asked if **REP. TUSS** was referring to the second license.

REP. MILLS said that the leasing industry itself is not going to be worried about these except as they affect their clients.

REP. EWER said if there is an incorporated body that has been created they should protect from bad characters. He asked whether it was just this entity or whether it should be the principles of that entity. Corporate officers should be used in the amendment.

TAPE 2, SIDE B

CHAIRMAN SIMON said this does go beyond where it needs to go. He opposed the amendment. The language which this contains goes too far.

REP. TUSS said the amendment is necessary. A mistake still stays on a credit record for seven years. It is not unreasonable to offer a businessman the assurance that if someone has a criminal history, that person is not going to be offering them services.

REP. EWER said he favored the amendment.

Vote: **A roll call vote on the #1 Tuss amendment which failed 4-14 with REP. COCCHIARELLA, ELLINGSON, EWER and TUSS voting yes.**

Motion/Vote: **REP. TUSS MOVED THE #2 TUSS AMENDMENT. Motion carried 16-2 with REPS. MILLS and HERRON voting no.**

Motion/Vote: **REP. EWER MOVED THE GAGE AMENDMENTS. Motion carried 18-0.**

Motion/Vote: **REP. MILLS MOVED SB 264 BE CONCURRED IN AS AMENDED. Motion carried 18-0.**

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL DATE 3-14-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-14-95 BILL NO. SB 264 NUMBER

MOTION: Tuss amendment

Failed

NAME	AYE	NO
Rep. Bruce Simon, Chairman		✓
Rep. Norm Mills, Vice Chair, Maj.		✓
Rep. Bob Pavlovich, Vice Chair, Min.		✓
Rep. Joe Barnett		✓
Rep. Vicki Cocchiarella	✓	
Rep. Charles Devaney		✓
Rep. Jon Ellingson	✓	
Rep. Alvin Ellis, Jr.		✓
Rep. David Ewer	✓	
Rep. Rose Forbes		✓
Rep. Jack Herron		✓
Rep. Bob Keenan		✓
Rep. Don Larson		✓
Rep. Rod Marshall		✓
Rep. Jeanette McKee		✓
Rep. Karl Ohs		✓
Rep. Paul Sliter		✓
Rep. Carley Tuss	✓	

HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 264** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Bruce Simon, Chair

And, that such amendments read: **Carried by: Rep. Wiseman**

1. Title, line 9.
Following: "PENALTIES;"
Insert: "AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA;"

2. Page 1, lines 21, 27, and 29.
Page 2, line 11
Page 3, lines 14, 16, 18, 20, 27, and 30
Page 5, line 29
Page 6, line 20
Page 7, line 20
Page 8, lines 9, 13, 18, and 22
Page 11, lines 28 and 29
Page 12, line 28
Page 14, lines 12, 13, 14, 15, 21, and 22
Page 15, line 13
Page 16, lines 13 and 15
Strike: "15"
Insert: "17"

3. Page 3, line 13.
Following: "arrangement"
Insert: "or an employee leasing arrangement"

4. Page 8, line 26.
Following: "to"

Committee Vote:
Yes 18, No 0.

601429SC.Hdh

Insert: ": (i)"

5. Page 8, line 27.
Following: "department"
Strike: "and to"
Insert: "; (ii) notify each client in writing that the client shares joint and several liability, retroactive to the date of the client's entering into a contract with the licensee, for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and (iii)"

6. Page 9, line 16.
Following: "worker"
Strike: "subject to a professional employer arrangement"
Insert: "supplied to a client by a professional employer organization or group"

7. Page 9, line 17.
Following: "joint"
Insert: "and several"

8. Page 9, line 18.
Following: "group"
Strike: ";"
Following: "and"
Insert: "that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and"

9. Page 12, line 29.
Following: "33"
Insert: "unless the professional employer organization or group:
(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee benefit program as defined in 29 U.S.C. 1002(1);
(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is exempt under 33-17-103(4)."

10. Page 14, line 16.
Strike: "$500"
Insert: "$1,000"

11. Page 14, line 18.
Insert: " NEW SECTION. **Section 12. Practice without license -- investigation of complaint -- injunction.** (1) The department shall investigate complaints concerning practice by an unlicensed person of activities for which a license is required under [sections 1 through 17].
(2) The department may file an action to enjoin a person from practicing without a license as a professional employer organization or group.
NEW SECTION. **Section 13. Violation of injunction -- penalty.** A person who violates an injunction issued under [section 12] shall pay a civil penalty, as determined by the court, of not more than $5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund."
Renumber: subsequent sections

12. Page 16, line 2.
Following: "ADVISORY"
Insert: "or rating"
Following: "ORGANIZATION"
Insert: "of which the insurer is required to be a member under Title 33, chapter 16, part 10,"

13. Page 16, line 12.
Insert: "**Section 18.** Section 39-71-117, MCA, is amended to read:
"**39-71-117. Employer defined.** (1) "Employer" means:
(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased

employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(i), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) ~~An~~ Except as provided in [sections 1 through 17], an employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) ~~Notwithstanding the provisions of subsection (3), an~~ An interstate or intrastate common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 19. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or

hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner or sole proprietor is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(6) ~~An~~ Except as provided in [sections 1 through 17], an employee or worker in this state whose services are furnished by

a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(8) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under subsection (7)(d).""

Renumber: subsequent sections

-END-

SENATE BILL NO. 264

INTRODUCED BY GAGE, WISEMAN, MCKEE, KEATING, MOLNAR, MILLS, SPRAGUE, ARNOTT, KEENAN, MILLER, MCGEE, SWYSGOOD, FORRESTER, HARDING, ORR

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PROFESSIONAL EMPLOYER ORGANIZATIONS LICENSING ACT; REQUIRING LICENSING OF AND STANDARDS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; REQUIRING PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE COVERAGE; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING EXEMPTIONS AND PENALTIES; AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] authorizes the department of labor and industry to adopt rules regarding professional employer organization and group licensing. It is intended that the department develop rules similar to those adopted by other states that regulate professional employer licensing organizations and groups and develop rules to provide for the reciprocal licensing provisions provided for in [this act].

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through ~~14~~ ~~15~~ 17] may be cited as the "Montana Professional Employer Organizations and Groups Licensing Act".

(2) The legislature recognizes that there is a public need for professional employer services and finds it necessary in the interest of public health, safety, and welfare to establish standards for the operation, regulation, and licensing of professional employer organizations and groups in this state.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through ~~14~~ ~~15~~ 17], unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under [sections 1 through ~~14~~ ~~15~~ 17].

(2) "Client" means a person who obtains all or part of its workforce from another person through

a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.

(4) "Department" means the department of labor and industry.

(5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a ~~person~~ PROFESSIONAL EMPLOYER ORGANIZATION hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) "Licensee" means a person licensed as a professional employer organization or group under [sections 1 through ~~14~~ ~~15~~ 17].

(7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.

(8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

(i) a professional employer organization or group assigns employees to perform services for a client;

(ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

(iii) the employer responsibilities are shared by the professional employer organization or group and the client.

(b) The term does not include:

(i) services performed by a temporary service contractor;

(ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering into professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group; and

(iii) arrangements exist for employment of an independent contractor as defined in 39-71-120.

(9) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

(10) "Professional employer organization" means:

(a) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

(b) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(11) "Temporary service contractor" means a person conducting a business that hires its own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

NEW SECTION. **Section 3. License required -- exemption -- rulemaking authority.** (1) On or after [the effective date of this act], a person who acts as a professional employer organization or group by entering into a professional employer arrangement OR AN EMPLOYEE LEASING ARRANGEMENT with a client in this state without a license or who violates the provisions of [sections 1 through ~~14~~ ~~15~~ 17] may be subject to the penalties provided in [section 11].

(2) The provisions of [sections 1 through ~~14~~ ~~15~~ 17] do not apply to a labor organization, the state or its political subdivisions, the United States, or any programs or agencies of those entities.

(3) A license issued under [sections 1 through ~~14~~ ~~15~~ 17] remains the property of the department and may not be transferred.

(4) The department may adopt rules to implement the provisions of [sections 1 through ~~14~~ ~~15~~ 17].

NEW SECTION. **Section 4. Initial license application -- application fee -- standards.** (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of [sections 1 through ~~14~~ ~~15~~ 17]. The application fee is:

(a) $750 for a resident or nonresident unrestricted license; and

(b) $500 for a restricted license.

(3) As a condition of licensure under [sections 1 through ~~14~~ ~~15~~ 17], an applicant who is not a

resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group shall meet the following standards:

(a) An individual must be 18 years of age or older.

(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that no written partnership agreement exists.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation and provide a certificate of good standing from the secretary of state demonstrating that the corporation is qualified to do business in this state.

(d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company and provide a certificate of good standing from the secretary of state demonstrating that the company is qualified to do business in this state.

(e) A group:

(i) must be authorized to act on behalf of the group;

(ii) shall include for each professional employer organization within the group the information required in subsection (4); and

(iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group. ~~A professional employer group may satisfy the reporting and financial requirements of [section 9] on a consolidated basis.~~

(5) An applicant shall also provide:

(a) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.

(b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and

(c) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

(6) Except for an applicant who is granted a restricted license under subsection (8), an applicant shall maintain a tangible accounting net worth of not less than $50,000, evidenced by providing a financial statement prepared in accordance with generally accepted accounting principles and accompanied by a compilation report by an independent certified public accountant. Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted. A financial statement submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group. In meeting the specified net worth requirement, the applicant may provide to the department a surety bond, letter of credit, or marketable securities acceptable to the department. A surety will not be acceptable to satisfy this requirement unless the applicant submits sufficient evidence to satisfy the department that the surety has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification by the department or its agent.

(7) The applicant shall maintain a positive working capital, as determined in accordance with generally accepted accounting principles.

(8) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

(a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups, the applicant is licensed and in good standing in the state of residence or domicile, and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under [sections 1 through ~~14~~ ~~16~~ 17];

(b) the applicant does not maintain an office, a sales force, or a sales representative in this state

and does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

(9) An applicant for a nonresident or restricted license shall file, on a form provided by the department, an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this state.

(10) A license issued under this section remains the property of the department and may not be transferred.

NEW SECTION. **Section 5. Denial of license application or renewal -- hearing.** (1) The department shall deny a license application or an application to renew a license if:

(a) the application is not fully completed or properly executed;

(b) documents required to supplement the application are not included in the application packet or are inadequate;

(c) the nonrefundable application or license fee is not submitted or is incorrectly submitted with the application packet;

(d) the applicant or any person named in the application misrepresents material in the application;

(e) the applicant is determined by the department to lack good moral character, business integrity, or financial responsibility; or

(f) the department determines that the applicant has failed to meet or maintain any requirement of [sections 1 through ~~14~~ ~~15~~ 17].

(2) Conviction of a crime within the last 7 years does not automatically bar an applicant from obtaining a license or bar a licensee from renewing a license. The department shall consider the type of crime committed, the crime's relevancy to the employee leasing industry, the length of time since the conviction, and any other factor considered relevant by the department.

(3) The department or its agent shall furnish the applicant with a written statement of the reason or reasons for denying the license or license renewal application.

(4) An applicant or licensee may request a hearing before the department within 30 days after receiving the written denial statement. The hearing and appeal must follow the procedures provided in Title 2, chapter 4, parts 6 and 7.

(5) During the hearing and appeal process, a licensee may continue to operate unless the

circumstances warrant the ordering of immediate cessation of operations. If the renewal application is rejected, the licensee shall cease operations within this state 30 days after receiving written notification. A licensee who does not comply with the department's order to cease is subject to the penalties provided in [section 11].

(6) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation of an order to cease occurs, an action for an injunction, order, or other civil remedy in district court to enforce its order.

(7) An applicant or licensee is ineligible to reapply for a license for 1 year following final department action denying the issuance of or renewal of a license. The 1-year restriction does not apply to an administrative denial or nonrenewal if the denial or nonrenewal was caused:

(a) by an inadvertent error or omission on the application;

(b) by experience that was insufficiently documented to the department at the time of the previous application;

(c) by a failure to submit the required fees; or

(d) when the applicant or licensee was determined to be ineligible because an individual no longer associated with the professional employer organization or group was determined to lack good moral character, business integrity, or financial responsibility.

NEW SECTION. **Section 6. License renewal.** (1) Except as provided in subsection (5), a license issued under [sections 1 through ~~14~~ ~~15~~ 17] is valid for 1 year from the date of issuance unless suspended or revoked.

(2) At least 30 days prior to the expiration of the license, the licensee shall submit an application for renewal of a license on a form prescribed by the department and accompanied by the license fee, as provided in [section 7].

(3) A late renewal application may not be processed prior to the expiration of the licensee's current license. A person engaged in an unlicensed activity is subject to the penalty established in [section 11].

(4) Denial of a renewal license is subject to review under the provisions of [section 5].

(5) If the application fee required in [section 4] is paid and accepted, then no additional license fee is required for the first year.

NEW SECTION. **Section 7. Renewal fees.** (1) The fee for the renewal of a resident or nonresident unrestricted license is $750.

(2) The fee for the renewal of a restricted license is $500.

(3) The application fee required in [section 4] does not apply to the renewal of an unrestricted license.

(4) A restricted license may not be granted to a professional employer organization or group that is a resident of or domiciled in another state if the state requires licensing but does not grant a similar privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.

(5) Fees collected must be used by the department to implement [sections 1 through ~~14~~ ~~15~~ 17].

NEW SECTION. **Section 8. License suspension, revocation, or nonrenewal.** (1) In addition to the penalty provided in [section 11], the department may suspend for up to 1 year, may permanently revoke, or may refuse to renew a license issued under [sections 1 through ~~14~~ ~~15~~ 17] if, after notice to the licensee of the charges and after a hearing, the department finds that any of the following exists:

(a) a cause for which issuance of the license could have been refused had it been known to the department at the time of issuance;

(b) a violation of an order of the department or noncompliance with any provision of [sections 1 through ~~14~~ ~~15~~ 17];

(c) procurement of or attempting to procure a license through misrepresentation or fraud;

(d) failure to provide a written response to a written inquiry from the department or its agent within 30 days after receiving an inquiry; or

(e) failure to meet or maintain any other requirement of [sections 1 through ~~14~~ ~~15~~ 17].

(2) If a license is suspended, revoked, or not renewed, the department shall:

(a) immediately notify by certified mail the licensee and the licensee's workers' compensation carrier; and

(b) require the licensee to:

(I) notify each client by certified mail, return receipt requested, of the suspension, revocation, or nonrenewal using language furnished by the department ~~and to~~;

(II) NOTIFY EACH CLIENT IN WRITING THAT THE CLIENT SHARES JOINT AND SEVERAL LIABILITY, RETROACTIVE TO THE DATE OF THE CLIENT'S ENTERING INTO A CONTRACT WITH THE

LICENSEE, FOR ANY WAGES, WORKERS' COMPENSATION PREMIUMS, PAYROLL-RELATED TAXES, AND ANY BENEFITS LEFT UNPAID BY THE PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP; AND

(III) provide the department with evidence of client notification.

(3) Upon notification, the licensee may appeal the decision of the department pursuant to the procedure provided in [section 5].

NEW SECTION. **Section 9. Requirements of licensee.** (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, WORKERS' COMPENSATION PREMIUMS, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker ~~subject to a professional employer arrangement~~ SUPPLIED TO A CLIENT BY A PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP, the client shares joint AND SEVERAL liability for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group~~;~~ and THAT, IN THE EVENT THAT THE LICENSEE'S LICENSE IS SUSPENDED OR REVOKED, THIS LIABILITY IS RETROACTIVE TO THE CLIENT'S ENTERING INTO A CONTRACT WITH THE LICENSEE; AND

(d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. ~~The employer shall disclose to the client a statement providing that the professional employer organization or group~~ THE DISCLOSURE MUST PROVIDE THAT THE PROFESSIONAL EMPLOYER ORGANIZATION:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter.

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating an employee leasing arrangement or professional employer arrangement.

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state. When a professional employer organization or group uses an employee leasing arrangement

with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization ~~or group~~ is the employing unit, as defined in 39-51-201, AND SHALL KEEP SEPARATE RECORDS AND SUBMIT QUARTERLY WAGE LISTS FOR EACH OF ITS CLIENTS.

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of workers' compensation coverage for all employees assigned to any client location in this state.

(5) A professional employer organization or group is the employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements.

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

(d) the policy limits on each insurance policy; and

(e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974, as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties

must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of [sections 1 through ~~14~~ ~~15~~ 17]. Subject to the provisions of [sections 1 through ~~14~~ ~~15~~ 17], a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

~~(9) A provider of workers' compensation insurance shall base classifications and rates applicable to the payroll of a worker subject to either a professional employer arrangement or an employee leasing arrangement as though the worker had been a direct employee of the client. A licensee shall maintain payroll records by classification for each client during the term of the arrangement. If an experience modification has been established for the client, that experience modification may be applied by the insurer to the premium for the client's leased workers.~~

(9) A PROFESSIONAL EMPLOYER ORGANIZATION THAT APPLIES FOR WORKERS' COMPENSATION COVERAGE SHALL ALSO MAINTAIN AND FURNISH TO THE INSURER SUFFICIENT INFORMATION TO PERMIT THE CALCULATION OF AN EXPERIENCE MODIFICATION FACTOR FOR EACH CLIENT EMPLOYER, INCLUDING BUT NOT LIMITED TO:

(A) THE CLIENT EMPLOYER'S CORPORATE OR BUSINESS NAME;

(B) THE CLIENT EMPLOYER'S TAXPAYER OR EMPLOYER IDENTIFICATION NUMBER;

(C) THE CLIENT EMPLOYER'S RISK IDENTIFICATION NUMBER;

(D) A LISTING OF ALL EMPLOYEES ASSIGNED TO EACH CLIENT EMPLOYER AND THE APPLICABLE CLASSIFICATION CODE AND PAYROLL; AND

(E) THE CLIENT EMPLOYER'S FIRST REPORT OF INJURY IDENTIFYING THE CLIENT EMPLOYER AND ANY OTHER INFORMATION NECESSARY TO PERMIT THE CALCULATION OF AN EXPERIENCE MODIFICATION FACTOR FOR EACH CLIENT EMPLOYER.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance,

fidelity bonds, surety bonds, ~~and employers' liability~~ and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, ~~or employers' liability~~ or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to [sections 1 through ~~14~~ ~~15~~ 17] does not constitute the sale of insurance under Title 33 UNLESS THE PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP:

(A) UNDERTAKES TO INDEMNIFY ANOTHER OR PAY OR PROVIDE A SPECIFIED OR DETERMINABLE AMOUNT OF BENEFIT BASED ON DETERMINABLE CONTINGENCIES UNLESS DONE THROUGH A LICENSED INSURER OR AN EMPLOYEE BENEFIT PROGRAM AS DEFINED IN 29 U.S.C. 1002(1);

(B) SOLICITS, NEGOTIATES, EFFECTS, PROCURES, DELIVERS,RENEWS, CONTINUES, OR BINDS AN INSURANCE POLICY UNLESS DONE THROUGH A LICENSED INSURANCE PRODUCER; OR

(C) IS EXEMPT UNDER 33-17-103(4).

(12) ~~(a) The existence of a professional employer arrangement does not constitute employment within the meaning of 39-51-204 if the client is a sole proprietor or a working member of a partnership.~~

~~(b) An individual~~ A SOLE PROPRIETOR OR A WORKING MEMBER OF A PARTNERSHIP working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.

NEW SECTION. **Section 10. Deceptive practices prohibited.** A professional employer organization or group may not:

(1) make, issue, circulate, or cause to be made, issued, or circulated an estimate, illustration, circular, statement, advertisement, sales presentation, omission, or comparison that misrepresents the

benefits, advantages, conditions, or terms of a professional employer arrangement or that is otherwise untrue, deceptive, or misleading;

(2) enter into an agreement to commit or by concerted action commit an act of boycott, coercion, or intimidation that results in unreasonable restraint of or monopoly in the business of professional employer services;

(3) file with the department or other public official or make, publish, disseminate, circulate, or deliver to a person a false statement of financial condition with the intent to deceive;

(4) knowingly:

(a) make a false entry of a material fact in a book, report, or statement of a person; or

(b) omit a material fact pertaining to the business of the person from a book, report, or statement of that person;

(5) permit the use or filing of a name, trade name, fictitious name, or business identity that is the same as or similar to or that may be confused with the name, trade name, fictitious name, or business identity of an existing licensee, governmental agency, or nonprofit organization; or

(6) commit any other practice determined by department rule to be deceptive.

NEW SECTION. **Section 11. Disciplinary action against licensee -- penalties.** (1) The department may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person who:

(a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

(b) engages in fraud, deceit, misrepresentation, or misconduct in:

(i) obtaining or providing workers' compensation or health coverage;

(ii) the classification of employees;

(iii) the reporting of employee wages for purposes of unemployment insurance or workers' compensation benefits; or

(iv) the operation of a professional employer organization or group;

(c) conducts business without a valid license;

(d) fails to maintain evidence of workers' compensation insurance coverage;

(e) transfers or attempts to transfer a license issued pursuant to [sections 1 through ~~14~~ ~~15~~ 17]; or

(f) violates the provisions of [sections 1 through ~~14~~ ~~15~~ 17] or a rule issued pursuant to [sections 1 through ~~14~~ ~~15~~ 17].

(2) A person who fails to comply with the provisions of [sections 1 through ~~14~~ ~~15~~ 17] is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to ~~$500~~ $1,000, imprisonment for not more than 1 year, or both.

NEW SECTION. **SECTION 12. PRACTICE WITHOUT LICENSE -- INVESTIGATION OF COMPLAINT -- INJUNCTION.** (1) THE DEPARTMENT SHALL INVESTIGATE COMPLAINTS CONCERNING PRACTICE BY AN UNLICENSED PERSON OF ACTIVITIES FOR WHICH A LICENSE IS REQUIRED UNDER [SECTIONS 1 THROUGH 17].

(2) THE DEPARTMENT MAY FILE AN ACTION TO ENJOIN A PERSON FROM PRACTICING WITHOUT A LICENSE AS A PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP.

NEW SECTION. **SECTION 13. VIOLATION OF INJUNCTION -- PENALTY.** A PERSON WHO VIOLATES AN INJUNCTION ISSUED UNDER [SECTION 12] SHALL PAY A CIVIL PENALTY, AS DETERMINED BY THE COURT, OF NOT MORE THAN $5,000. FIFTY PERCENT OF THE PENALTY MUST BE DEPOSITED IN THE GENERAL FUND OF THE COUNTY IN WHICH THE INJUNCTION IS ISSUED, AND 50% MUST BE DEPOSITED IN THE STATE GENERAL FUND.

NEW SECTION. **Section 14. Investigations -- audits -- reviews.** (1) The department or its agent may perform an investigation, audit, or review necessary to determine whether a person has violated any provision of [sections 1 through ~~14~~ ~~15~~ 17] or any rule promulgated by the department to implement [sections 1 through ~~14~~ ~~15~~ 17].

(2) Except as provided in subsection (3), material compiled by the department or its agent in an investigation, audit, or review pursuant to this section is a public record and may be disclosed.

(3) Financial information, client lists, and lists of workers that are assigned by a professional employer organization or group and that are obtained by the department or its agent during an investigation, audit, or review are confidential ~~and are not subject to disclosure~~ AND MAY NOT BE PUBLISHED OR BE OPEN TO PUBLIC INSPECTION, EXCEPT TO PUBLIC EMPLOYEES IN THE PERFORMANCE OF THEIR PUBLIC DUTIES.

NEW SECTION. **Section 15. Disclosure of information.** (1) The department may not disclose to any person the records, statements, or documents received from an applicant, client, or professional employer organization or group, except:

(a) information necessary for ~~state agency personnel to perform official duties~~ PUBLIC EMPLOYEES IN THE PERFORMANCE OF THEIR PUBLIC DUTIES; or

(b) in response to an order received by a court of competent jurisdiction upon a finding that the disclosure of the record, statement, or document is necessary because the merits of disclosure clearly exceed the demand for individual privacy.

(2) The department may publish or make available to the public reasonable statistical data or reports regarding professional employer organizations or groups if the data or reports protect the identity of an applicant, client, or professional employer organization or group.

NEW SECTION. **Section 16. Other law.** (1) [Sections 1 through ~~14~~ ~~15~~ 17] do not exempt a client of a professional employer organization or group or an employee assigned to a client by a professional employer organization or group from other local, state, or federal license or registration requirements.

(2) An employee who is licensed, registered, or certified under law and who is assigned to a client location is an employee of the client for purposes of the license, registration, or certification.

(3) Except as provided in a professional employer arrangement, a professional employer organization or group is not liable for the general debts, obligations, profit losses, business goodwill, or other damages of a client with which it has entered into a professional employer arrangement.

NEW SECTION. **SECTION 17. WORKERS' COMPENSATION INSURER REQUIREMENTS.** (1) AN INSURER THAT PROVIDES WORKERS' COMPENSATION INSURANCE TO ~~A CLIENT EMPLOYER OF~~ A PROFESSIONAL EMPLOYER ORGANIZATION SHALL BASE CLASSIFICATIONS AND RATES APPLICABLE TO THE PAYROLL OF A WORKER WHO IS SUBJECT TO EITHER A PROFESSIONAL EMPLOYER ARRANGEMENT OR AN EMPLOYEE LEASING ARRANGEMENT AS THOUGH THE WORKER HAS BEEN A DIRECT EMPLOYEE OF THE CLIENT EMPLOYER. IF AN EXPERIENCE MODIFICATION HAS BEEN ESTABLISHED FOR THE CLIENT EMPLOYER, THAT EXPERIENCE MODIFICATION MUST BE AUDITED USING THE FACTORS IN SUBSECTION (3) AND MUST BE APPLIED BY THE INSURER TO THE PREMIUM FOR THE CLIENT EMPLOYER'S WORKERS.

(2) THE INSURER OF A PROFESSIONAL EMPLOYER ORGANIZATION SHALL REPORT TO THE WORKERS' COMPENSATION ADVISORY OR RATING ORGANIZATION OF WHICH THE INSURER IS REQUIRED TO BE A MEMBER UNDER TITLE 33, CHAPTER 16, PART 10, ALL DATA BY CLIENT, INCLUDING PAYROLL BY CLASSIFICATION AND LIABILITIES FOR EACH CLIENT DURING THE TERM OF THE POLICY.

(3) AN INSURER SHALL AUDIT POLICIES ISSUED TO A PROFESSIONAL EMPLOYER ORGANIZATION WITHIN 90 DAYS OF THE POLICY EFFECTIVE DATE AND MAY CONDUCT QUARTERLY AUDITS THEREAFTER. THE PURPOSE OF THE AUDIT IS TO DETERMINE WHETHER ALL CLASSIFICATIONS, EXPERIENCE MODIFICATION FACTORS, AND ESTIMATED PAYROLL USED WITH RESPECT TO THE DEVELOPMENT OF THE PREMIUM CHARGED ARE APPROPRIATE.

(4) ALL OPERATIONS OF A CLIENT, WHETHER OR NOT ALL OR A PORTION OF THE CLIENT'S OPERATIONS ARE SUBJECT TO A PROFESSIONAL EMPLOYER ARRANGEMENT OR EMPLOYEE LEASING ARRANGEMENT, MUST BE INSURED BY THE SAME INSURER.

SECTION 18. SECTION 39-71-117, MCA, IS AMENDED TO READ:

"**39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) ~~An~~ Except as provided in [sections 1 through 17], an employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) ~~Notwithstanding the provisions of subsection (3), an~~ An interstate or intrastate common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

SECTION 19. SECTION 39-71-118, MCA, IS AMENDED TO READ:

"**39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay.

Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner or sole proprietor is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(6) ~~An~~ Except as provided in [sections 1 through 17], an employee or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(8) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under subsection (7)(d)."

NEW SECTION. **Section 20. Codification instruction.** [Sections 1 through ~~14~~ ~~15~~ 17] are intended to be codified as an integral part of Title ~~37~~ 39, and the provisions of Title ~~37~~ 39 apply to [sections 1 through ~~14~~ ~~15~~ 17].

NEW SECTION. **Section 21. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 22. Effective date.** [This act] is effective July 1, 1995.

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